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CLERK

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

NO._____

ARCHIE BOND, JR., et al.

Petitioners

vs.

GENERAL MOTORS CORP., et al.

Respondents

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

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QUESTION PRESENTED

Whether a District Court has jurisdiction over an action pursuant to Section 301 of the Labor Management Relations Act where employees are subject to a joint arbitration panel of union and management which has an interest in the outcome of a grievance under a collective bargaining agreement.

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PETITION FOR A WRIT OF CERTIORARI
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To the Honorable, the Chief Justice and Associate Justice of the Supreme Court of the United States:

Bond, et al.,[1] the petitioners herein, pray that a writ of certiorari

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1. The parties to this suit are the

issue to review the judgment of the United States Sixth Circuit Court of Appeals entered in the above entitled case on February 7, 1983.

OPINIONS BELOW

The decision of the United States Sixth Circuit Court of Appeals is unreported and is printed in Appendix A, hereto, infra, page A-1. The opinion of the United States District Court for the

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following: Archie Bond, Jr., Eugene K. Coon, and William K. Lacek, Petitioners, and
General Motors Corporation; International Union, United Automobile, Aerospace and Agricultural Implement Workers of America; and International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, Local #1005, Respondents.

Northern District of Ohio, Eastern Division, is printed in Appendix B, hereto, infra, page B-1. The Journal Entry of Judgment of the United States District Court for the Northern District of Ohio, Eastern Division, is printed in Appendix B, hereto, infra, page B-27.

JURISDICTION

The Judgment of the United States Sixth Circuit Court of Appeals (Appendix A, infra, page A-1) was entered on February 7, 1983. The jurisdiction of the Supreme Court is invoked under 28 U.S.C. Section 1254.

STATUTE INVOLVED

Labor Management Relations Act; 29 U.S.C. Section 185 (1976) (also referred to as Section 301):

Section 185. Suits by and against labor organizations.

(a) Venue, amount and citizenship. Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

(b) Responsibility for acts of agent--Entity for purposes of suit --Enforcement of money judgments. Any labor organization which represents employees in an industry affecting commerce as defined in this Act and any employer whose activities affect commerce as defined in this Act shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets and shall not be enforceable against any individual member or his assets.

(c) Jurisdiction. For the purposes of actions and proceedings by or against labor organizations in

the district courts of the United States, district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members.

(d) Service of process. The service of summons, subpoena, or other legal process of any court of the United States upon an officer or agent of a labor organization, in his capacity as such, shall constitute service upon the labor organization.

(e) Determination of question of agency. For the purposes of this section, in determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling. (June 23, 1947, c. 120, Title III, Section 301, 61 Stat. 156).

STATEMENT OF CASE

Archie Bond, Jr., Eugene K. Coon, and William K. Lacek filed a complaint on June 5, 1981, in the United States District Court, in the Northern District of Ohio,

Eastern Division, invoking jurisdiction pursuant to 29 U.S.C. Section 185 (1976) (Section 301 of the Labor Management Relations Act). The plaintiffs seek compensatory and punitive damages against the defendants, General Motors Corporation, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (International U.A.W.), and International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, Local #1005 (Local U.A.W.), alleging a breach of a Collective Bargaining Agreement. Such agreement is the "Supplemental Agreement covering Supplemental Unemployment Benefit Plan" (Supplemental Agreement covering the SUB Plan) dated September 14, 1979. The Supplemental Agreement is part of the Main Collective Bargaining Agreement between General Motors Corporation and the United Auto Workers.

During parts of 1979 and 1980, Archie Bond, Jr., an employee of the General Motors plant in Parma, Ohio, was laid off from his employment. Pursuant to the terms of the SUB Plan he received SUB Benefits totaling 95% of his regular pay until he returned to work. In September and October of 1980, more than 120 days after he was laid off, Mr. Bond was notified by General Motors, along with all employees laid off during that period, that he was required to pay back SUB Benefits he had received in 1979 and 1980 because during that time he was eligible for Trade Readjustment Act Benefits (Trade Act of 1974, 19 U.S.C. Sections 2101-2487). These Trade Readjustment Benefits were distributed by the Department of Labor for persons who were laid off due to foreign imports affecting their employment. Mr. Bond refused to pay back SUB funds he had received and General Motors forci-

bly began deducting $30.00 from his paychecks claiming Mr. Bond had been overpaid SUB funds.

Mr. Bond filed a grievance under a two-step grievance procedure under the SUB Plan with the Local Committee claiming that Article II Section 6 of the SUB Plan dealing with Benefit Overpayments did not allow General Motors to recoup SUB benefit overpayments after 120 days. (Appendix B, infra, page B-5, n.2.) The Local Committee, a joint committee of union and management, simply restated Article II Section 6 to Mr. Bond and denied his grievance. Mr. Bond appealed the decision to the second and final stage under the two-step procedure to the SUB Board of Appeals, another joint committee of union and management. Mr. Bond received a letter from General Motors signed by Beach B. Hall stating that his appeal was referred back to Parma, Ohio, for processing.

Mr. Bond never received anything more by way of an explanation and General Motors continued to take $30.00 out of his paycheck.

Mr. Bond, along with Eugene K. Coon, and William K. Lacek, filed a class action lawsuit in Federal District Court for breach of a collective bargaining agreement alleging that General Motors and the United Autoworkers violated the 120 day overpayment provision of Art. II Section 6 of the Supplemental Agreement, and that the defendant unions unfairly represented Mr. Bond in his grievance.

With the complaint, the employees filed interrogatories but both the company and union filed Motions to Stay Discovery which were never ruled on by the District Court. No discovery took place, on account of those pending motions. The unions filed a motion to dismiss in lieu of an answer which was responded to by

the employees. General Motors filed a Motion to Dismiss or in the Alternative for Summary Judgment to which the employees also responded. On August 28, 1981, the District Court issued a memorandum and order and on August 31, 1981, a final Order dismissing the complaint. The employees filed their Notice of Appeal to the United States Circuit Court of Appeals on September 30, 1981.

The District Court treated the union and company's Motions to Dismiss as summary judgment motions and granted the defendants' motions. The District Court ruled that the grievance procedure involving the Local Committee amounted to final and binding arbitration on the employees; that General Motors could recoup alleged SUB benefit overpayments prior to the date of the Supplemental Agreement (September 14, 1979) because the previous agreement was "similar"; the employees

failed to serve the Local Committee timely; and that the employees had no basis for their claim of unfair representation by the union. The District Court did find that plaintiffs Coon and Lacek could join in the lawsuit without exhausting the grievance procedure in the Supplemental Agreement because to do so would have been futile in lieu of the action taken on Mr. Bond's appeal. (District Court opinion is printed in Appendix B hereto, infra, page B-1.)

The matter came before the Sixth Circuit on the employees' Notice of Appeal challenging the District Court's dismissal of the case in granting General Motors' summary judgment motion. The Court of Appeals after the filing of briefs, appendix, and oral argument summarily dismissed the employees' claims. (Court of Appeals decision is printed in Appendix A, hereto, infra, page A-1.)

REASON FOR GRANTING WRIT

The Court of Appeals simply upheld the decision of the District Court by affirming without an opinion the District Court's decision. The District Court's decision stated that the finality of the Collective Bargaining Agreement ruled and therefore it had no jurisdiction to hear the employees' case pursuant to the Labor Management Relations Act. While the federal case law generally supports the proposition that collective bargaining grievance procedures are final and the proposition that Joint Boards can serve as arbitrators, it stretches logic to assume that a Board of Union and Management, which has the same joint interest in the outcome of the interpretation of the collective bargaining agreement, can sit as fair and impartial arbitrators. The deference to be given the finality of the arbitration procedures is not absolute and blind.

Steelworkers v. American Mfg. Co., 363 U.S. 574 (1960).

One of the grounds for setting aside an arbitrator's award is evident partiality. Office of Supply v. New York Navigation Co., 469 F.2d 377 (2d Cir. 1972). Additionally, the facts of the workers' claims here are different than most Section 301 suits. The employees are not taking a factual question before the committee in regard to a personal grievance, but are alleging that the language of Article II Section 6 of the SUB Agreement has been misinterpreted.

Federal labor policy has made a distinction in discussing the adequacy of intraunion grievance procedures. "The policy in favor of allowing the union to attempt to resolve its internal difficulties initially is not absolute, however, the underlying test is whether the available procedures are adequate and reasonable

in light of the facts of the particular case." Geddes v. Chrysler Corp., 608 F.2d 261, 264 (6th Cir. 1979).

The Courts will more closely scrutinize a grievance procedure when it involves a complex problem dealing with the employer, union, and employee members as opposed to a dispute between the union and a member. Id. The Court goes on to state that intraunion remedies are best designed to deal with internal union policy and practice and not "revocation of certain benefits and salaries, which the employees contend is a breach of their contract." Id. at 264. The employees have raised the latter issue and it is not in the legitimate interest of labor policy to coerce employees to utilize the SUB Agreement grievance procedure without any possible resort to pursuing their rights in Court. NLRB v. Marine Workers, 391 U.S. 418 (1968); Helton v. NLRB 656 F.2d 883 (D.C. Cir.1981);

Elevator Constructors Local 8 v. NLRB (D.C. Cir. 1981). Thus, the court decision that argues that the SUB Agreement's grievance procedure is absolutely controlling is without merit. Said decision pursues a line of logic which would require employees to submit their complaint to the same group they are suing, a line of reasoning which has been rejected. Glover v. St. Louis - San Francisco Railway Co., 393 U.S. 324 (1969). An arbitrator has the responsibility to provide a fair hearing to employers, union and grievants. Gross & Bordoni, Reflections on the Arbitrator's Responsibility to Provide a Full and Fair Hearing: How to Bite the Hands that Feed You, 29 Syracuse L. Rev. 877 (1978). There is the requirement that an arbitrator is to assert, "an independence of the parties in order to fulfill arbitral obligations that transcend or even conflict with the intentions of the

employer and/or union parties to the contract." Id. at 880.

The employees in such a situation --where the intraunion remedies are inadequate--are allowed to seek substantive relief through a Section 301 suit. Clayton v. UAW, 451 U.S. 679 (1981). While Clayton dealt with the principles detailing the need for exhaustion of grievance procedures to utilize Section 301 suits, its logic is applicable here: If the internal grievance procedures are not adequate, and there is no reasonable possibility that the employees' claim will be resolved by this private procedure, then employees can seek substantive relief through a Section 301 suit. Id. The employees have a valid Section 301 suit in that the Local Committee and SUB Board were so hostile as to be unable to conduct a fair hearing. When the internal union procedures are inadequate, the Court

should exercise jurisdiction. Tinsley v. United Parcel Service, 665 F.2d 778 (7th Cir. 1981). "[A]n . . . individual will not be required to go through meaningless grievance procedures where it is clear such procedures are biased against the complainant." Farmer v. Ara Services, Inc., 660 F.2d 1096, 1106 (6th Cir. 1981). The employees did exhaust their internal remedies under the SUB Agreement, but those procedures were not suited to redress their claims.

This is clearly a Section 301 suit even without an unfair representation claim because of the biased grievance procedure on this set of facts. Assuming arguendo that the Union and G.M.'s contention is correct, that the employees, since they were not represented by the Union in their grievance, cannot bring an unfair representation claim, then at the very least the employees are entitled to

a neutral forum with an impartial arbitrator or Board of Arbitrators available to make a decision in regard to an alleged collective bargaining breach. "And it cannot be said, in the normal situation, that contract grievance procedures are inadequate to protect the interests of an aggrieved employee until the employee has attempted to implement the procedures and found them so." Republic Steel v. Maddox, 379 U.S. 650, 653 (1965).

This Court should hear the employees' claim, to settle the issue of federal labor policy surrounding employee rights under collective bargaining agreements pursuant to the Labor Management Relations Act. It is the employees' contention that said Act allows them a fair and neutral forum to hear their grievance.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Petition for Writ of Certiorari to the Supreme Court of the United States was mailed by regular U. S. Mail, postage prepaid, to Dennis M. Kelly and Janet L. Miller, Jones, Day, Reavis & Pogue, 1700 Union Commerce Building, Cleveland, Ohio 44115, Attorneys for Defendant, General Motors Corporation; and to David Roloff, Stokes & Green, 620 Leader Building, Cleveland, Ohio 44114, Attorney for Defendant Unions, this_____day of May, 1983.

FRANK J. GROH-WARGO
JOHN J. WARGO
Attorneys for Petitioners

APPENDIX A

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

ARCHIE BOND, JR., et al.	)	81-3609
Plaintiffs-Appellants	)	
vs.	)	ORDER
GENERAL MOTORS CORP., et al.	)	
Defendants-Appellees	)	

Before: EDWARDS, Chief Circuit Judge, ENGEL, Circuit Judge and PHILLIPS, Senior Circuit Judge.

This civil action was brought by three General Motors employees at the General Motors Parma plant against the General Motors Corporation and the International Union, Automobile, Aerospace and Agricultural Implement Workers of America. The employees alleged that General Motors breached the condition of a collective bargaining agreement and that the defendant unions breached their duty of fair repre-

sentation, asserting jurisdiction under section 301 of the Labor Management Relations Act, 29 U.S.C. Section 185 (1976). We note that the essential dispute is over whether or not the Labor Management contract was violated when General Motors began deductions from plaintiffs' pay after each of them received payments for "adjustment assistance" under the Trade Act of 1974, 19 U.S.C. Sections 2101-2487 (1976), which said payments resulted in plaintiffs receiving in excess of 95% of their normal compensation on the job.

On review of the briefs, record and oral argument, this court finds that the actions complained of in relation to General Motors and the International and Local Unions concerned were in pursuance of Article II, Section 6 of the Company-Union contract, calling for supplemental unemployment benefits.

This Court agrees with the analysis of

the legal issues as set forth in the careful memorandum and order entered by Judge Robert B. Krupansky while acting as District Judge.

The judgment of the District Court is therefore affirmed.

ENTERED BY ORDER OF THE COURT

_____
Clerk

ISSUED AS MANDATE: March 1, 1983
COSTS: None

THE UNITED STATES DISTRICT COURT

THE NORTHERN DISTRICT OF OHIO

EASTERN DIVISION

ARCHIE BOND, JR., et al.	)	CIVIL ACTION NO. C81-1167
Plaintiffs	)	
v.	)	MEMORANDUM AND ORDER
GENERAL MOTORS CORPORATION, et al.	)	
Defendants	)	

KRUPANSKY, J.

This is a civil action instituted by the plaintiffs; Archie Bond, Jr. (Bond), Eugene K. Coon (Coon) and William K. Lacek (Lacek), seeking compensatory and punitive damages against the defendants; General Motors Corporation (G.M.), International United Automobile, Aerospace and Agricultural Implement Workers of America (the International) and International

Union, United Automobile, Aerospace and Agricultural Implement Workers of America, Local 1005 (Local 1005) charging inter alia that G.M. breached the conditions of a collective bargaining agreement and that the defendant unions breached their duty of fair representation.[1/] The Court's jurisdiction is invoked pursuant to Section 301 of the Labor Management Relations Act, 29 U.S.C. Section 185.

The matter is presently before the Court on G.M.'s motion to dismiss and the International and Local 1005's joint motion to dismiss. The plaintiffs have responded in opposition.

A review of the record in the instant matter discloses that each of the plaint-

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1/ The plaintiffs' complaint is styled as a class action. However, no motion for certification has been filed and in view of the disposition of the instant action provided herein, class action status is hereby denied.

iffs is a member of Local 1005 and each is an hourly-rate employee of G.M. at G.M.'s Motor Division Plant in Parma, Ohio (the Plant). In parts of 1979 and 1980 plaintiffs were laid off from their respective jobs at the Plant.

Pursuant to an agreement entitled "Supplemental Agreement Covering Supplemental Unemployment Benefit Plan", (the Supplemental Agreement) the plaintiffs became eligible for and received supplemental unemployment benefits (SUBenefits). The Supplemental Agreement, dated September 14, 1979, is a part of the main collective bargaining agreement between G.M. and the International. See Exhibit C, Section 1 to the Supplemental Agreement.

Contemporaneous with plaintiffs' layoffs, the International filed petitions with the Secretary of Labor seeking adjustment assistance for its members pursuant to the Trade Act of 1974, 19 U.S.C.

Sections 2101-2487. The particular sections of the Trade Act relevant to the within cause provide a scheme whereby workers who have been separated from their employment because of foreign competition are guaranteed 70% of their average weekly wage during the period of separation. 19 U.S.C. Sections 2271-2322. See generally International Union, United Automobile Aerospace and Agricultural Implement Workers of America, UAW v. Marshall, 584 F.2d 390 (D.C. Cir. 1978).

On May 13, 1980, the Department of Labor issued a certificate of eligibility providing in pertinent part:

> "All workers of components parts plants of General Motor Corporation listed in the appendix who became totally or partially separated from employment on or after the impact date listed in the appendix are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

5 Fed. Reg. 35050 (1980). The Parma Plant was listed in the appendix with an "impact

date" of June 1, 1979.

Thereafter, the plaintiffs applied for and received adjustment assistance for periods of separation from their employment at the Plant. Because of the adjustment assistance received, G.M. determined that Bond and Coon had received overpayments of SUBenefits. Pursuant to Art. II Section 6 of the Supplemental Agreement, G.M. notified Bond and Coon of the overpayments and, upon their failure to refund said overpayments, began withholding amounts of their wages.2/

2/ Article II Section 6 of the Supplemental Agreement provides in pertinent part:

> Section 6. Benefit Overpayments
>
> (a) If the Company or the Board determines that any Benefit(s) paid under the Plan should not have been paid or should have been paid in a lesser amount, written notice thereof shall be mailed to the Employe receiving the Benefit(s) and he shall return the amount of overpayment to the Trustee or Company whichever is

It appears, however, that with respect to plaintiff Lacek, G.M. made allowance for the amount of adjustment assistance before issuing SUBenefits to him and, accordingly, he was not required to refund any moneys received.

---

applicable; provided, however, that no repayment shall be required if the cumulative overpayment is $3 or less or if notice has not been given within 120 days from the date the overpayment was established or created, except that no such time limitation shall be applicable in cases of fraud or willful misrepresentation.

(b) If the Employe shall fail to return such amount of overpayment promptly:

(1) With respect to Benefits paid from the Fund, the Trustee shall arrange to reimburse the fund for the amount of overpayment by making a deduction from any future Benefits (not to exceed $20 from any 1 Benefit except in cases of fraud or willful misrepresentation) or Separation Payment otherwise payable to the Employe, or by requesting the Company to make a deduction from future Benefits of compensation payable by the Company to the

Plaintiff Bond objected to GM's withholding of his wages and appealed to the "Local Committee" in accordance with Art. V Section 3 of the Supplemental Agreement charging that adjustment assis-

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> Employe (not to exceed $30 from any 1 pay check except in cases of fraud or willful misrepresentation), or both; and
>
> (2) with respect to Benefits paid by the Company, the Company shall arrange to reimburse the Trustee for the amount of overpayment by making a deduction from any future payments payable under Letter Agreements between the Company and the Union dated September 14, 1979 or from any future Benefits (not to exceed $20 from any 1 Benefit except in cases of fraud or willful misrepresentation) otherwise payable to the Employe by the Company, or to make a deduction from compensation payable by the Company to the Employe (not to exceed $30 from any 1 pay check except in cases of fraud or willful misrepresentation), or both.
>
> The Company is authorized to make the deductions from the Employe's compensation as provided under subparagraph (1) and (2) of this subsection, and to pay the amounts deducted to the Trustee.

tance was not properly deductible from SUBenefits and that G.M. had failed to comply with the notice provisions established in the Supplemental Agreement. The Local Committee is the appointed body for hearing appeals relating to SUBenefits and consists of one member designated by G.M. and one member designated by the Union. See Art. VI Section 2(b)(7) of the Supplemental Agreement. On January 20, 1981, the Local Committee denied Bond's appeal, holding that G.M. had the right to make deductions on account of adjustment assistance and that G.M. had complied with the applicable notice provisions.

According to the terms of the Supplemental Agreement, the Local Committee's decision is final and no further appeals to the Board of Administration of the Plan (the Board) are permitted unless the Local Committee has not reached a resolution.

Therefore, Bond's attempt to appea the Local Committee's ruling was ineffectual. Plaintiffs Coon and Lacek did not attempt to appeal G.M.'s determination at any time.

Plaintiffs then initiated this action asserting in count I of their complaint that G.M. had breached the Supplemental Agreement by 1) failing to comply with the 120 notice period for the recoupment of benefits;[3/] and 2) requiring repayment of SUBenefits issued prior to September 14, 1979, the effective date of the Supplemental Agreement. In count II of plaintiffs' complaint, they charge the defendant unions with breach of their duty of fair representation, alleging that the unions did not fairly represent them and also "purposely, arbitrarily and capriciously" failed to process Bond's appeal.

3/ See text of Art. II Section 6(a) set forth at n.2 supra.

As indicated, the matter is before the Court on the defendants' motions to dismiss. However, inasmuch as matters outside the pleadings have been presented to and utilized by the Court, the instant motions shall be treated as motions for summary judgment. See Rule 12(b), Fed. R. Civ. P.

It is apparent from the foregoing recital of the factual chronology that plaintiffs Coon and Lacek have not attempted to secure relief through the procedures established in the collective bargaining agreement. Thus, initially the Court must determine whether, regarding Coon and Lacek, their failure to pursue contractual remedies bars them from seeking relief in this Court.

The law is well-settled that, in the absence of exceptional circumstances, a Court may not entertain a suit by an employee against his employer for breach of

a collective bargaining agreement until the employee has at least attempted to exhaust any exclusive procedures for redress established under the terms of the agreement. Clayton v. International Union, United Automobile, Aerospace and Agricultural Workers of America, __U.S.__, 101 S.Ct. 2088, 2091 (1981), Vaca v. Sipes, 386 U.S. 171, 184, 87 S.Ct. 903, 914 (1967); Republic Steel Corp. v. Maddox, 379 U.S. 650, 652, 85 S.Ct. 614, 616 (1965).

It was clearly the intent of the parties to the Supplemental Agreement that the appeals procedure provided therein was to be the exclusive method for resolving controversies involving SUBenefits. The Agreement provides as follows in Art. V Section 3(b)(2):

> (vi) There shall be no appeal from the Board's decision. It shall be final and binding upon the Union, its members, the Employe, the

> Trustee, and the Company. The Union will discourage any attempt of its members to appeal and will not encourage or cooperate with any of its members in any appeal, to any Court or Labor Board from a decision of the Board, nor will the Union or its members by any other means attempt to bring about the settlement of any claim or issue on which the Board is empowered to rule hereunder.

Coon and Lacek do not dispute the fact that they have failed to exhaust their contractual remedies, nor do they attempt to assert that the remedies were not intended to be exclusive. Rather, Coon and Lacek contend that the Local Committee's disposition of Bond's appeal rendered any appeal on their part futile. The law, as plaintiffs properly observe, will not compel an exercise in futility and, accordingly, employees are excused from exhausting contractual procedures when to do so would be clearly ineffective. Glover v. St. Louis-San Francisco Ry. Co., 393 U.S. 324, 330, 89 S.Ct. 548, 551 (1969).

The issues presented to the Local Committee in Bond's appeal are substantially identical to those presented in the instant suit by Coon and Lacek.[4/] Nothing in the record indicates any difference in Coon's or Lacek's position which would make their appeal to the Local Committee more effective than Bond's. Indeed, the parties to the Supplemental Agreement apparently realized that issues common to several members of the union would arise and that an appeal by one member could expeditiously settle an issue for all. Accordingly, Art. V Section 3(b)(1)(i) of the Supplemental Agreement provides in pertinent part:

4/ It does appear that the 120 day notification period which, it is alleged, G.M. did not comply with, is inapplicable to Lacek inasmuch as the amount of deductions on account of adjustment assistance benefits was computed prior to his receiving SUBenefits. This difference, however, bears no relevance to the issue of futility of the contractual procedures.

> In situations where a number of Employes has filed applications for Benefits or Separation Payments under substantially identical conditions, an appeal may be filed with respect to one of such Employes, in accordance with procedures established by the Board, and the decision thereon shall apply to all such Employes.

While the record does not reflect that Bond's appeal to the Local Committee was intended to represent other employees, the appeal nevertheless prompted a decision by the Committee on facts substantially similar to other employees--namely Coon and Lacek.

For the foregoing reasons, the Court is constrained to conclude that resort to the contractual grievance resolution procedures by plaintiffs Coon and Lacek would be futile. Thus, the Court will not require them to exhaust contractual remedies before addressing their claims.

Having concluded, in effect, that the decision of the Local Committee represents

the final resolution of plaintiffs' claims in accordance with the contractual scheme, the Court must now determine whether that ruling is binding on the plaintiffs. It can no longer be questioned that federal policy favors resolution of disputes by a method agreed upon by parties to a collective bargaining agreement. Hines v. Anchor Motor Freight, Inc., 424 U.S. 554, 562-63, 96 S.Ct. 1048, 1055-56 (1976); United Steelworkers of America v. American Mfg. Co., 363 U.S. 564, 80 S.Ct. 1343 (1960); United Steelworkers of America v. Enterprise Wheel and Car Corp., 363 U.S. 593, 80 S.Ct. 1358 (1960); United Steelworkers of America v. Warrior & Gulf Navigation Co., 363 U.S. 574, 80 S.Ct. 1347 (1960).

In order to further this policy, "courts ordinarily defer to collectively-bargained dispute resolution procedures when the parties' dispute arises out of

the collective bargaining process," Barrentine v. Arkansas-Best Freight System, __U.S.__, 101 S.Ct. 1437, 1442 (1981); Hines v. Anchor Motor Freight, Inc., supra at 562-63, 96 S.Ct. at 1055-56; and, absent particular circumstances, the award of the arbitrator is final and binding if the contract so provides. See e.g. Humphrey v. Moore, 375 U.S. 335, 351, 84 S.Ct. 363, 372, United Steelworkers of America v. Enterprise Wheel & Car Co., supra at 598-99, 80 S.Ct. 1361-62; Morris v. Werner Continental, Inc., 466 F.2d 1185, 1188-89 (6th Cir. 1972) cert. denied 411 U.S. 963, 93 S.Ct. 2144 (1973). Moreover, contrary to plaintiffs' assertions, a decision of a joint committee selected by the parties for definitive settlement of grievances is accorded the same degree of finality as a decision of a neutral arbitrator. See e.g. Hines v. Anchor Motor Freight, Inc., supra; Humphrey v.

Moore, supra; General Drivers, Warehousemen and Helpers, Local Union No. 89 v. Riss & Co., 372 U.S. 517, 83 S.Ct. 789 (1963).

The Supreme Court has recognized an exception to the general rule regarding the finality of contractual grievance procedures when a union has breached its duty of fair representation. Hines v. Anchor Motor Freight, Inc., supra. In Hines, the Court held that an employee could obtain judicial review of his wrongful discharge claim despite an adverse decision by an arbitration board if he could show that the arbitral process had been seriously undermined by the union's breach of its duty of fair representation. In such circumstances, the Court held, the union's breach "removes the bar of the finality provision of the contract." Id at 567, 96 S.Ct. at 1058. See also Ruzicka v. General Motors Corp., No.

78-1198 (6th Cir. June 2, 1981), Smart v. Ellis Trucking Co., 580 F.2d 215 (6th Cir. 1978) cert. denied, 440 U.S. 958, 99 S.Ct. 1497 (1979).

Thus, the foregoing authorities counsel that if, but only if, plaintiffs in the case at bar can demonstrate that the defendant unions breached their duty of fair representation and that such breach seriously undermined the dispute resolution procedure, then G.M. cannot properly raise the decision of the Local Committee as a bar to plaintiffs' claims.

In assessing plaintiffs' claims of unfair representation, the Court would note initially that "[a] breach of the statutory duty of fair representation occurs only when a union's conduct toward a member of the collective bargaining unit is arbitrary, discriminatory, or in bad faith." Vaca v. Sipes, 386 U.S. 171, 190, 87 S.Ct. 903, 916 (1967). See also Hines v. Anchor

Motor Freight, supra at 571-72, 96 S.Ct. at 1059; Humphrey v. Moore, supra; Dill v. Greyhound Corp., 435 F.2d 231, 237-38 (6th Cir. 1970) cert. denied 402 U.S. 952, 91 S.Ct. 1622 (1971). The Court would further note that the Sixth Circuit Court of Appeals has held that mere conclusory allegations of unfair representation will not withstand a properly supported motion for summary judgment. Balowski v. U.A.W., 372 F.2d 829, 835 (6th Cir. 1967). See also Smart v. Ellis Trucking Co., supra at 318 n.3.

In the instant cause plaintiffs' complaint merely charges that by not "questioning" the actions of G.M. the defendant unions "have purposely, arbitrarily and capriciously failed to fairly represent plaintiffs according to law" and "purposely, arbitrarily and capriciously failed to process the appeal of Archie Bond, Jr. in regard to the repayment of Supplemental

Unemployment Benefits." Plaintiffs' complaint and supporting papers do little to specify the manner in which the unions failed to fairly represent them. With respect to plaintiffs' allegations that the unions failed to "question" G.M.'s practices and process Bond's appeal, it is expressly provided in the Supplemental Agreement that the responsibility for appealing decisions of G.M. regarding SUBenefits rests on the individual employee and not on the unions. See Art. V Section 3(b). Thus the union had no duty under the contract to appeal decisions regarding SUBenefits and, indeed, had no more power to compel action on the part of G.M. than plaintiffs themselves possessed. See Retail Clerks International Ass'n. v. Lion Dry Goods, Inc., 341 F.2d 715 (6th Cir. 1965). Under these circumstances it strains credulity to suggest the unions breached their duty of fair

representation by not "questioning" the very procedures to which the unions had contractually agreed.

As indicated, the action is presently before the Court on motions for summary judgment, and the standards to be applied in passing on summary judgment motions generally are applicable to cases involving alleged breaches of a union's duty of fair representation. Willetts v. Ford Motor Co., 583 F.2d 852 (6th Cir. 1978); Balowski v. U.A.W., supra. The Sixth Circuit Court of Appeals explication of the standard in relation to a claim of unfair representation in Willetts is controlling in the controversy at bar. The Court in Willetts stated:

> [T]he application of the standard for granting summary judgment in this case meant that there could be no dispute about whether appellee union's action . . . was arbitrary, discriminatory, or in bad faith. The burden of showing that there was no issue of fact concerning

> appellee union's conduct being arbitrary, discriminatory, or in bad faith as to appellant was on the [the employer and the union] since they were the parties seeking summary judgment.

Willetts v. Ford Motor Co., supra at 854.

The record in the instant matter clearly establishes that defendants have carried their burden. As heretofore explained the responsibility for appealing adverse decisions respecting SUBenefits rested solely with the employee. The plaintiffs' conclusory allegations utterly fail to reveal any indication of how the defendant unions' action or inaction was arbitrary, discriminatory or in bad faith. In sum, the Court is constrained to conclude that the record, taken as a whole, clearly demonstrates that "recovery cannot be had on any state of the evidence." Hines v. Local Union No. 377, 506 F.2d 1153, 1157 (6th Cir. 1974), rev'd in part on other grounds, Hines v. Anchor Motor

Freight, supra. Thus summary judgment in favor of defendant unions is proper and hereby granted.

Having failed to establish a breach of the duty of fair representation by the unions, the plaintiffs are bound by the adverse decision of the Local Committee holding that G.M. did not breach the collective bargaining agreement. Accordingly, G.M. is entitled to judgment as a matter of law and summary judgment is also hereby granted in G.M.'s favor.

The plaintiffs' assertion that G.M.'s actions affected SUBenefits issued before the effective date of the Supplemental Agreement does not alter the result reached above. The record in the within cause establishes that prior to the effective date of the September 14, 1979 Supplemental Agreement, another agreement, identical in all material respects, governed

matters relating to SUBenefits.[5/] Hence, assuming arguendo that G.M.'s action did affect SUBenefits issued prior to the effective date of the 1979 Supplemental Agreement, plaintiffs would nevertheless be bound by the same contractual grievance procedures. Accordingly, the preceding analysis and conclusion reached with respect to the 1979 Supplemental Agreement apply with equal force to any alleged claims relating to SUBenefits predating that agreement.

The remaining issue before the Court is raised by count III of plaintiffs' complaint. It appears that count III attempts to state a cause of action against the Local Committee. The record reveals

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5/ See Supplemental Agreement Covering Supplemental Unemployment Benefit Plan dated November 22, 1976 (attached as Annex B to G.M.'s motion to dismiss).

however that service of process on the Local Committee has not been perfected.[6/] Therefore, in accordance with this Court's Pre-Trial Order, see Bond v. General Motors Corp., No. C81-1167 Order at p. 6 (N.D. Ohio, filed June 5, 1981); any purported claims against the Local Committee are hereby dismissed.

In accordance with the foregoing, summary judgment is hereby granted in favor of the defendants G.M., the International and Local 1005. Any claims purportedly advanced against the Local Committee are hereby dismissed for failure to perfect service.

IT IS SO ORDERED.

/s/ Robert B. Krupansky
United States District Judge

6/ Indeed the Local Committee does not appear as a defendant in the caption of plaintiffs' complaint. The failure to name the Local Committee as a defendant does not, standing alone, require dismissal of plaintiffs' claim against

it, Blanchard v. Terry & Wright Co., 331 F.2d 467 (6th Cir. 1964); and the Court's dismissal rests on the more fundamental failure regarding service as explained above.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

ARCHIE BOND, JR., et al.,	)	
Plaintiffs,	)	NO. C81-1167
vs.	)	ORDER
GENERAL MOTORS CORPORATION, et al.,	)	
Defendants.	)	

In accordance with the Memorandum and Order filed herein on Aug. 28, 1981,

IT IS ORDERED that the complaint herein is dismissed at plaintiffs' costs.

ROBERT B. KRUPANSKY
United States District Judge

Office Supreme Court, U.S.
FILED
JUN 10 1983
ALEXANDER L. STEVAS,
CLERK

IN THE

Supreme Court of the United States

October Term, 1982

No. 82-1826

ARCHIE BOND, JR., *et al.*,
Petitioners,

v.

GENERAL MOTORS CORPORATION, *et al.*,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BRIEF OF RESPONDENT, GENERAL MOTORS CORPORATION, IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI

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BRIEF OF RESPONDENT, GENERAL MOTORS CORPORATION, IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI

REPORTS OF OPINIONS

The opinions of the United States Court for the Northern District of Ohio, and the United States Court of Appeals for the Sixth Circuit have not been reported. A copy of each opinion is annexed to the Petition.

JURISDICTION OF THE COURT

The decisions of the United States District Court for the Northern District of Ohio and the United States Court of Appeals for the Sixth Circuit are wholly in accord with sound and well-settled principles of law. The Petition for a Writ of Certiorari presents no valid reason for the exercise of this Court's discretion to review the decisions below.

COUNTERSTATEMENT OF QUESTION PRESENTED FOR REVIEW

Did the District Court err in holding, and the Court of Appeals err in affirming, that "a decision of a joint committee selected by the parties for definitive settlement of grievances is accorded the same degree of finality as a decision of a neutral arbitrator" for purposes of Section 301 of the Labor Management Relations Act? (Memorandum and Order at 7; Petitioners' Appendix at B-16).

STATUTES INVOLVED

The Petition for a Writ of Certiorari is premised on the contention that petitioners were entitled to litigate the merits of a dispute arising under a collective bargaining agreement in the district court. It is well-established, however, that Section 301 of the Labor Management Relations Act does not allow a court jurisdiction, except in narrow circumstances not pertinent here, to determine the merits of a controversy arising under a collective bargaining contract between a union and an employer when the contract contains a final adjustment procedure agreed upon by the parties. Specifically, 29 U.S.C. § 173(d) provides, in relevant part:

> Final adjustment by a method agreed upon by the the parties is declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective-bargaining agreement.

As discussed below, the appeals procedure set forth in the collective bargaining agreement which is the subject of this action is the "final adjustment . . . method agreed upon by the parties" and no reason exists for disturbing the decision rendered pursuant to that final adjustment method.

COUNTERSTATEMENT OF CASE

Archie Bond, Jr., Eugene K. Coon and William Lacek are members of the United Automobile, Aerospace and Agricultural Implement Workers of America ("UAW") and the UAW Local #1005 and are employed by General Motors Corporation ("General Motors")[1] at its plant in Parma, Ohio. During certain periods in 1979 and 1980, each of the petitioners was laid off and applied for supplemental unemployment benefits ("SUBenefits") provided under the Supplemental Agreement Covering Supplemental Unemployment Benefit Plan ("Supplemental Agreement"), a contract negotiated by and between General Motors and the UAW.[2] Thereafter, each received SUBenefits determined in accordance with the provisions of the Supplemental Agreement. (Memorandum and Order at 1-2; Petitioners' Appendix at B-2, 3).

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[1]Pursuant to Rule 28.1 of this Court, the following is a listing of all parent companies, subsidiaries (except wholly-owned subsidiaries), and affiliates of respondent General Motors Corporation: Motor Enterprises, Inc. (partly owned by the U.S. Small Business Administration); GMFanuc Robotics Corp.; Colmotors, Columbia; General Motors Iran Limited, Iran; Isuzu Motors Limited, Japan; GM Allison Japan Limited, Japan; General Motors Kenya Limited, Kenya; Saehan Motor Company, Ltd., Korea; General Motors Pilipinas, Inc., Philippines; Saudi American Machinery Maintenance Company, Ltd., Saudi Arabia; and, Industria Delova Automobile, Yugoslavia.

[2]Relevant portions of the Supplemental Agreement are reproduced in Appendix I. The provisions of the Supplemental Agreement are cited by article and section number.

On May 13, 1980, the Secretary of Labor certified that employees at the Parma plant who had been totally or partially separated from employment on or after June 1, 1979 were eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, 19 U.S.C. § 2101 *et seq.*[3] Bond, Coon and Lacek then applied for and received TRA benefits for periods of layoff which occurred subsequent to the June 1, 1979 certification date. (Memorandum and Order at 2; Petitioners' Appendix at B-4, 5).

General Motors determined that, under the terms of the Supplemental Agreement, Bond and Coon received overpayments of SUBenefits because of the TRA benefits. Article II, Sections 1 and 3; Article IX, Section 23; Article II, Section 6. Pursuant to Article II, Section 6 of the Supplemental Agreement, General Motors notified both Bond and Coon of the overpayments and, upon their failure to refund the overpayment, began withholding, on behalf of the trust fund, certain amounts from their wages in accordance with Article II, Section 6(b). With respect to Lacek, General Motors determined the amount of TRA benefits Lacek had received and adjusted his SUBenefit payments as provided in Article II, Sections 1 and 3 and Article IX, Section 23. (Memorandum and Order at 2-4; Petitioners' Appendix at B-5, 6).

Bond appealed to the Local Committee in accordance with Article V, Section 3 of the Supplemental Agreement. On January 20, 1981, the Local Committee unanimously denied Bond's appeal, holding that General Motors had the right to make deductions for the overpayment of SUBenefits on behalf of the trust fund and that it had complied with the applicable notice provisions. (Memorandum and Order at 4; Petitioners' Appendix at B-7, 8).

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[3]Trade Readjustment Allowances ("TRA") are a type of federal unemployment benefit payable to employees of industries which are certified by the Secretary as affected by increased foreign competition. 19 U.S.C. § 2101 *et seq.*

Under the terms of the Supplemental Agreement, the decision of the Local Committee is final; no appeals to the Board of Administration ("Board") are permitted unless the Local Committee has not reached a unanimous decision. Article V, Section 3(b)(1)(iii); Article VI, Section 2(b)(7)(iv). Bond filed an appeal form with the Board, but because the Local Committee had unanimously resolved the appeal, the form was returned. Bond, Coon and Lacek then commenced this action alleging that General Motors had breached the Supplemental Agreement. Petitioners further alleged that the union had breached its duty of fair representation by failing "to question" the requirement that overpayments be repaid to the SUBenefit trust fund and by "purposely, arbitrarily and capriciously" failing to process Bond's appeal challenging the recoupment of the SUBenefit overpayment.[4] (Memorandum and Order at 4; Petitioners' Appendix at B-8, 9).

The District Court granted summary judgment in favor of General Motors and the unions stating, *inter alia:*

> It was clearly the intent of the parties to the Supplemental Agreement that the appeals procedure

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[4]The retroactive certification of employees as eligible to receive TRA benefits has spawned numerous appeals under the collective bargaining agreement by employees who have attempted to obtain a windfall. As noted by the court in *Lumpkins v. General Motors Corp.*, No. 81-0402-C(5) (E.D. Mo. 1981) (copy reproduced in Appendix II):

> Under plaintiffs' theory, workers would actually benefit more from their unemployment . . . . [A]n unemployed worker could actually receive between 160 and 190 percent of his usual take-home pay if he were permitted to collect his unemployment benefits in the manner prescribed by plaintiffs.

Even in this case, the petitioners have never contended that the determination of the amount of SUBenefits each of them was actually entitled to receive was in any way incorrect. Rather, petitioners have contended that the provision in the collective bargaining agreement for notice of overpayment (Article II, Section 6) has been misinterpreted. (Petition at 13).

provided therein was to be the exclusive method for resolving controversies involving SUBenefits.

(Memorandum and Order at 5; Petitioners' Appendix at B-11).[5] The decision of the District Court was affirmed by the Sixth Circuit.

SUMMARY OF ARGUMENT

A review by this Court of the within matter would not fulfill any of the purposes set forth in Rule 17 of this Court for the granting of a writ of certiorari. The decisions by the District Court for the Northern District of Ohio and the Court of Appeals for the Sixth Circuit to dismiss the within action were correct and were based upon sound and well-settled principles of law. A joint union-management committee is vested with authority to resolve disputes arising under a bargaining agreement and is a proper vehicle for the final settlement of such disputes. Petitioners' assertions to the contrary ignore the decisions of this Court directly in point. There is no reason for this Court to grant this Petition.

ARGUMENT

I. THE CASE WAS CORRECTLY DECIDED UPON SOUND AND WELL-SETTLED PRINCIPLES OF LAW BY THE COURTS BELOW.

A. The Appeals Procedure Set Forth in The Supplemental Agreement Is The "Final Adjustment . . . Method Agreed Upon By The Parties."

The appeals procedure established under the Supplemental Agreement requires that a dispute be submitted

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[5]The District Court also found that unions had not breached any duty of fair representation stating:

> The plaintiffs' conclusory allegations utterly fail to reveal any indication of how the defendant unions' action or inaction was arbitrary, discriminatory or in bad faith.

(Memorandum and Order at 10; Petitioners' Appendix at B-22).

first to the Local Committee, a committee composed of a union representative and a management representative. Article V, Section 3; Article VI, Section 2(b)(7)(i). If, and only if, the Local Committee is unable to resolve the dispute unanimously, the employee may appeal to the Board. Article VI, Section 2(b)(7)(iv); Article V, Section 3(b)(1)(iii). The Board, like the Local Committee, is composed of union representatives and management representatives. Article VI, Section 2(a)(1).[6]

Petitioners' sole argument in this Court is that "it stretches logic to assume that a Board of Union and Management, which has the same joint interest in the outcome of the interpretation of the collective bargaining agreement, can sit as fair and impartial arbitrators." (Petition at 12). Petitioners, however, never describe any "joint interest" of General Motors or the unions in their Petition. More importantly, petitioners completely ignore the decisions of this Court and lower federal courts which are directly contrary to the petitioners' argument.

In giving effect to the congressional policy embodied in 29 U.S.C. § 173(d), this Court has stated:

> Section 203(d) of the Labor Management Relations Act . . . 29 U. S. C. § 173(d) states, "Final adjustment by a method agreed upon by the parties is hereby declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective-bargaining agreement. . . ." That policy can be effectuated only if the means chosen by the parties for settlement of their differences under the collective bargaining agreement is given full play.

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[6]If the Board cannot resolve the dispute by a majority vote, the dispute is to be resolved by an Impartial Chairman. Article VI, Section 2(a)(2).

Steelworkers v. American Mfg. Co., 363 U.S. 564, 566 (1960).

In *Truck Drivers Union v. Riss & Co.*, 372 U.S. 517 (1963) (per curiam), this Court squarely held that joint committees, committees like the Local Committee and the Board here, are equally suitable as a "final adjustment . . . method agreed upon by the parties":

> If, as petitioners allege, the award of the Joint Area Cartage Committee is under the collective bargaining agreement final and binding, the District Court has jurisdiction under § 301 to enforce it . . . (citations omitted). Plainly, this allegation cannot be rejected on the basis merely of what the present record shows. It is not enough that the word "arbitration" does not appear in the collective bargaining agreement, for we have held that the policy of the Labor Act "can be effectuated only if the means chosen by the parties for settlement of their differences under a collective bargaining agreement is given full play." (citations omitted). Thus, if the award at bar is the parties' chosen instrument for the definitive settlement of grievances under the Agreement, it is enforceable under § 301. And if the Joint Area Cartage Committee's award is thus enforceable, it is of course not open to the courts to reweigh the merits of the grievance. (citations omitted).

Id. at 519. *See Humphrey v. Moore*, 375 U.S. 335, 351 (1964) ("The decision of the committee, reached after proceedings adequate under the agreement, is final and binding upon the parties, just as the contract says it is."). *Cf. United Parcel Service, Inc. v. Mitchell*, 451 U.S. 56 (1981) (Action to vacate the decision of a joint board

barred by the statute of limitations governing arbitration awards).[7]

The lower federal courts, following the mandate of this Court, have held consistently that decisions of joint union-management boards are entitled to the same judicial deference as decisions rendered pursuant to other types of dispute resolution. *See, e.g., Teamsters Local 30 v. Helms Express, Inc.*, 591 F.2d 211 (3rd Cir.), *cert. denied*, 444 U.S. 837 (1979); *United Mine Workers v. Barnes & Tucker Co.*, 561 F.2d 1093 (3rd Cir. 1977); *Morris v. Werner-Continental, Inc.*, 466 F.2d 1185 (6th Cir. 1972), *cert. denied*, 411 U.S. 965 (1973); *Navajo Freight Lines, Inc. v. International Brotherhood of Teamsters*, 306 F. Supp. 536 (D. Colo. 1969).[8]

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[7]Petitioners attempt to draw a distinction between "taking a factual question before the committee in regard to a personal grievance" and "alleging that the language of Article II Section 6 of the SUB Agreement has been misinterpreted." (Petition at 13). This argument is equally without merit since the statute itself applies to any disputes "arising over the application or interpretation" of the agreement. 29 U.S.C. § 173(d). Moreover, this Court has expressly held that any dispute must be deemed to be arbitrable "unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute." *Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 582-583 (1960). *See also John Wiley & Sons, Inc. v. Livingston*, 376 U.S. 543 (1964).

[8]In support of their assertions, petitioners cite cases which are totally unrelated to the type of collectively bargained procedures which are the subject of this action. In fact, most of petitioners' cases address internal union procedures, procedures which "were not bargained for by the employer and union" and which are "significantly different" from the procedures petitioners challenge here. *Clayton v. International Union, UAW*, 451 U.S. 679, 687 (1981). Hence, the reasoning set forth in those cases has no application to this Petition.

There is no conflict between decisions of the courts of appeal or decisions of this Court and the decision below. The principles governing this action have been long established and consistently applied. The courts below adhered to these principles and did not depart in any way "from the accepted and usual course of judicial proceedings." U.S. Sup. Ct. Rule 17.1(a), 28 U.S.C.

B. No Reason Exists For Disturbing The Decision Rendered By The Joint Committee Pursuant To The Collective Bargaining Agreement's Dispute Procedure.

Petitioners assert that General Motors and the unions had an "interest" in the proceedings which precluded the joint union-management committee from properly resolving the issue. The only "interest" ever asserted by petitioners, a "pecuniary interest" of General Motors and the unions in the recovery of SUBenefit overpayments, was first raised by petitioners in their brief before the Sixth Circuit.[9] Even a cursory review of the Supplemental Agreement, however, clearly shows that petitioners and their co-workers are the only persons who benefit from the trust fund from which the SUBenefits are paid. Article IX, Section 14. For example, when it is determined that an overpayment of SUBenefits has been made and the employee has failed to return the overpayment, the facts of this case, "General Motors is authorized to make the deductions from the Employe's compensation as provided under subparagraph (1) and (2) . . . and to pay the amounts deducted *to the Trustee.*" Article II, Section 6(b) (emphasis added). *See, e.g.*, Article VI, Section 2(b)(2)(iv) (In the event an employee appeals the deter-

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[9]Having failed to raise the issue in the district court, petitioners are barred from raising the issue in these proceedings. *Hormel v. Helvering*, 312 U.S. 552 (1941); *Aro Corp. v. Allied Witan Co.*, 531 F.2d 1368 (6th Cir.), *cert. denied*, 429 U.S. 862 (1976).

mination with respect to a payment or denial of a SUBenefit and the Board rules that the SUBenefit should be paid, the Board is "to *notify the Trustee* . . . .") (emphasis added). Petitioners' vague and unsupported assertions of a "joint interest in the outcome of the interpretation of the collective bargaining agreement" are patently frivolous.

The decisions of the District Court for the Northern District of Ohio and the Court of Appeals for the Sixth Circuit correctly applied established principles of law. There is no unresolved question of importance in this case which merits this Court's time and attention.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petitioners in this case demonstrate none of the grounds set forth in Rule 17 of this Court for the granting of a writ of certiorari. Accordingly, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Copies of the foregoing Brief of Respondent, General Motors Corporation, were mailed, postage prepaid, this ..... day of June, 1983 to each of the following:

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APPENDIX I

Relevant Portions of the Supplemental Agreement:

ARTICLE II

Section 1. Regular Benefits

(a) The Regular Benefit payable to an eligible Employe for any Week beginning on or after October 1, 1979 shall be an amount which, when added to his State Benefit and Other Compensation, will equal 95% of his Weekly After-Tax Pay, minus $12.50 to take into account work related expenses not incurred; provided, however, that such Benefit shall not exceed $90 for any Week beginning prior to October 1, 1979, and $115 for any Week beginning on or after October 1, 1979, with respect to which the Employe is not receiving State System Benefits because of a reason listed in item (2) or (6) of Section 1(b) of Article I and is laid off or continues on layoff by reason of having refused to accept work when recalled pursuant to the Collective Bargaining Agreement or having refused an offer by the Company of other available work at the same Plant or at another Plant in the same labor market area (as defined in Section 3(b)(3) of Article I); . . . .

Section 3. State Benefit and Other Compensation

(a) An Employe's State Benefit and Other Compensation for a Week means:

(1) the amount of State System Benefit received or receivable by the Employe for the Week or the estimated amount which the Employe would have received if he had not been ineligible therefor solely:

(i) as set forth in item (8) of Section 1(b) of Article I (concerning a Week for which his pay received or receivable from the Company

was less than the amount which disqualifies him for a State System Benefit but not less than such amount minus $2); or

(ii) under certain of the circumstances determined to be covered by item (11) of Section 1(b) of Article I (concerning a week for which he was denied a State System Benefit and it is determined that, under the circumstances, it would be contrary to the intent of the Plan to deny him a Benefit); . . . .

Section 6. Benefit Overpayments

(a) If the Company or the Board determines that any Benefit(s) paid under the Plan should not have been paid or should have been paid in a lesser amount, written notice thereof shall be mailed to the Employe receiving the Benefit(s) and he shall return the amount of overpayment to the Trustee or Company whichever is applicable; provided, however, that no repayment shall be required of the cumulative overpayment is $3 or less or if notice has not been given within 120 days from the date the overpayment was established or created, except that no such time limitation shall be applicable in cases of fraud or willful misrepresentation.

(b) If the Employe shall fail to return such amount of overpayment promptly:

(1) with respect to Benefits paid from the Fund, the Trustee shall arrange to reimburse the Fund for the amount of overpayment by making a deduction from any future Benefits (not to exceed $20 from any 1 Benefit except in cases of fraud or willful misrepresentation) or Separation Payment otherwise payable to the Employe, or by requesting the Company to make a deduction from future Benefits or compensation payable by the Company to the Employe (not to exceed $30 from any 1 pay check except in cases of fraud or willful misrepresentation), or both; and

(2) with respect to Benefits paid by the Company, the Company shall arrange to reimburse the Trustee for the amount of overpayment by making a deduction from any future payments payable under Letter Agreements between the Company and the Union dated September 14, 1979 or from any future Benefits (not to exceed $20 from any 1 Benefit except in cases of fraud or willful misrepresentation) otherwise payable to the Employe by the Company, or to make a deduction from compensation payable by the Company to the Employe (not to exceed $30 from any 1 pay check except in cases of fraud or willful misrepresentation), or both.

The Company is authorized to make the deductions from the Employe's compensation as provided under subparagraph (1) and (2) of this subsection, and to pay the amounts deducted to the Trustee.

ARTICLE V

Section 3. Appeals

(a) Applicability of Appeals Procedure

(1) The appeals procedure set forth in this Section may be employed only for the purposes specified in this Section.

(2) No question involving the interpretation or application of the Plan shall be subject to the grievance procedure provided for in the Collective Bargaining Agreement.

(b) Procedure for Appeals

(1) First Stage Appeals

(i) An Employe may appeal from the Company's written determination (other than determinations made in connection with Section 1(b)(11) of Article I) with respect to the payment or denial of a Benefit or a Separation Payment by filing a written appeal with the Local Committee on a form provided for that purpose.

In situations where a number of Employes had filed applications for Benefits or Separation Payments under substantially identical conditions, an appeal may be filed with respect to one of such Employes, in accordance with procedures established by the Board, and the decision thereon shall apply to all such Employes. If there is no Local Committee at any Plant because of a discontinuance of such Plant, the appeal may be filed directly with the Board. Appeals concerning determinations made in connection with Section 1(b)(11) of Article I (contrary to the intent of Plan) shall be made directly to the Board.

(ii) The appeal shall be filed with the designated Company representative within 30 days following the date of mailing of the determination appealed. If the appeal is mailed, the date of filing shall be the postmark date of the appeal. No appeals will be valid after the 30-day period.

(iii) The Local Committee shall advise the Employe, in writing, of its resolution of, or failure to resolve his appeal. If the appeal is not resolved within 10 days after the date thereof (or such extended time as may be agreed upon by the Local Committee), the Employe, or any 2 members of the Local Committee, at the request of the Employe may refer the matter to the Board for disposition.

(2) Appeals to the Board

(i) An appeal to the Board shall be considered filed with the Board when filed with the designated Company representative for the Plant at which the first stage appeal was considered by the Local Committee.

(ii) Appeals shall be in writing, shall specify the respects in which the Plan is claimed to have been violated, and shall set forth the facts relied upon as justifying a reversal or modification of the determination appealed from.

(iii) Appeals by the Local Committee to the Board with respect to Benefits or Separation Payments shall be made within 20 days following the date the appeal is first considered at a meeting of the Local Committee, plus such extension of time as the Local Committee shall have agreed upon. Appeals by the Employe to the Board with respect to Benefits or Separation Payments shall be made within 30 days following the date the notice of the Local Committee's decision is given or mailed to the Employe. If the appeal is mailed, the date of filing shall be the postmark date of the appeal.

(iv) The handling and disposition of each appeal to the Board shall be in accordance with regulations and procedures established by the Board.

(v) The Employe, the Local Committee or the Union Members of the Board may withdraw any appeal to the Board at any time before it is decided by the Board, on a form provided for that purpose.

(vi) There shall be no appeal from the Board's decision. It shall be final and binding upon the Union, its members, the Employe, the Trustee, and the Company. The Union will discourage any attempt of its members to appeal and will not encourage or cooperate with any of its members in any appeal, to any Court or Labor Board from a decision of the Board, nor will the Union or its members by any other means attempt to bring about the settlement of any claim or issue on which the Board is empowered to rule hereunder.

(vii) The Local Committee shall be advised, in writing, by the Board of the disposition of any appeal previously considered by the Local Committee, and referred to the Board. A copy of such dispostion shall be forwarded to the Employe by the Local Committee.

ARTICLE VI

Section 2. Board of Administration of the Plan

(a) Composition and Procedure

(1) There shall be established a Board of Administration of the Plan consisting of 6 members, 3 of whom shall be appointed by the Company (hereinafter referred to as the Company members) and 3 of whom shall be appointed by the Union (hereinafter referred to as the Union members). Each member of the Board shall have an alternate. In the event a member is absent from a meeting of the Board, his alternate may attend, and, when in attendance, shall exercise the powers and perform the duties of such member. Either the Company or the Union at any time may remove a member appointed by it and may appoint a member to fill any vacancy among the members appointed by it. The Company and the Union each shall notify the other in writing of the members respectively appointed by it before any such appointment shall be effective.

(2) The members of the Board shall appoint an Impartial Chairman, who shall serve until requested in writing to resign by 3 members of the Board. If the members of the Board are unable to agree upon a Chairman, the Umpire under the Collective Bargaining Agreement shall make the appointment; provided, however, that the Company and Union members may, by agreement, request such Umpire to serve as the Impartial Chairman of the Board. The Impartial Chairman shall be considered a member of the Board and shall vote only in matters within the Board's authority to determine which the other members of the Board shall have been unable to dispose of by majority vote, except that the Impartial Chairman shall have no vote concerning determinations made in connection with Section 1(b)(11) of Article I (contrary to intent of Plan).

(3) At least 2 Union members and 2 Company members shall be required to be present at any meet-

ing of the Board in order to constitute a quorum for the transaction of business. At all meetings of the Board the Company members shall have a total of 3 votes and the Union members shall have a total of 3 votes, the vote of any absent member being divided equally between the members present appointed by the same party. Decisions of the Board shall be by a majority of the votes cast.

(b) Powers and Authority of the Board

(1) It shall be the function of the Board to exercise ulitmate responsibility for determining whether an Employe is eligible for a Benefit or Separation Payment under the terms of the Plan, and, if so, the amount of the Benefit or Separation Payment.

The Board shall be presumed conclusively to have approved any initial determination by the Company unless the determination is appealed as set forth in Section 3(b) of Article V.

(2) The Board shall be empowered and authorized and shall have jurisdiction to,

(i) hear and determine appeals by Employes;

(ii) obtain such information as the Board shall deem necessary in order to determine such appeals;

(iii) prescribe the form and content of appeals to the Board and such detailed procedures as may be necessary with respect to the filing of such appeals;

(iv) direct the Company to pay Automatic Short Week Benefits or to notify the Trustee to pay other Benefits or Separation Payments pursuant to determinations made by the Local Committee or the Board;

(v) prepare and distribute, on behalf of the Board, information explaining the Plan;

(vi) rule upon disputes as to whether any Short Work Week resulted from an act of God, as defined in Article VII, Section 5(c)(1);

(vii) rule upon disputes as to whether any Short Work Week, occurring during a period when the CUCB is less than $625, is deemed to be scheduled or unscheduled; and

(viii) perform such other duties as are expressly conferred upon it by the Plan.

(3) In ruling upon appeals, the Board shall have no authority to waive, vary, qualify, or alter in any manner the eligibility requirements set forth in the Plan, the procedure for applying for Benefits or Separation Payments as provided for therein, or any other provision of the Plan; and shall have no jurisdiction other than to determine, on the basis of the facts presented and in accordance with the provisions of the Plan:

(i) whether the first stage appeal and the appeal to the Board were made within the time and in the manner specified in Section 3(b) of Article V,

(ii) whether the Employe is eligible for the Benefit or Separation Payment claimed and, if so,

(iii) the amount of any Benefit or Separation Payment payable; and

(iv) whether a protest of an Employe's State System Benefit by the Company is frivolous.

(4) The Board shall have no jurisdiction to act upon any appeal filed after the applicable time limit or upon any appeal that does not comply with the Board-established procedures.

(5) The Board shall have no power to determine questions arising under the Collective Bargaining Agreement, even though relevant to the issues before the Board. All such questions shall be determined through the regular procedures provided therefor by

the Collective Bargaining Agreement, and all determinations made pursuant to the Agreement shall be accepted by the Board.

(6) Nothing in this Article shall be deemed to give the Board the power to prescribe in any manner internal procedures or operations of either the Company or the Union.

(7) The Board shall provide for a Local Committee at each Plant of the Company to handle appeals from determinations as provided in Section 3(b)(1) of Article V, except determinations made in connection with Section 1(b)(11) of Article I (contrary to intent of the Plan).

(i) The Local Committee shall be composed of 1 member designated by the Company members of the Board and 1 member designated by the Union members of the Board. Appointments to the Local Committee shall become effective when the members' names are exchanged in writing between the GM Department of the Union and the Industrial Relations Staff of the Company. Either the Company or Union members of the Board may remove a Local Committee member appointed by them and fill any vacancy among the Local Committee members appointed by them.

(ii) Any individual appointed by the Union as a member of a Local Committee shall be an Employe having Seniority at the Plant where, and at the time when, he is to serve as a member of the Local Committee.

(iii) In addition to their regularly appointed Local Committee member, the Union members of the Board may name 1 additional Employe, who qualifies under (ii) above, as an alternate Local Committee member to serve during temporary specified periods when a Local Committee member is absent from the Plant during scheduled working hours and unable to serve on the Committee. The Company members of the Board may

also name 1 alternate Local Committee member to serve during temporary specified periods. The alternate Local Committee member may serve on the Local Committee when the party desiring him to serve gives notice, locally, to the other party of such temporary service and the period thereof.

(iv) All Local Committee members must be present at any meeting in order for the Local Committee to transact business. Each Local Committee member shall have one vote and decisions of the Local Committee shall be unanimous.

ARTICLE IX

* * *

(14) *"Fund"* means a trust fund established under the Plan to receive and invest Company contributions and to pay Benefits and Separation Payments;

* * *

(23) *"State System"* means any system or program established pursuant to any state or federal law for paying benefits to persons on account of their unemployment under which a person's eligibility for benefit payments is not determined by application of a "means" or "disability" test. State System also includes:

(a) any system or program established by law to supplement, replace or extend the benefits available under any state or federal laws for paying benefits to persons on account of their unemployment (such as the Trade Readjustment Allowances provided under the Federal Trade Expansion Act of 1962, as amended, and the Trade Act of 1974), or

(b) any such system or program established for the primary purpose of education or vocational training where such programs may provide for training allowances;

"*State System Benefit*" means an unemployment benefit payable under a State System, including any dependency allowances and training allowances but excluding any allowance for transportation, subsistence, equipment or other cost of training and excluding any "Back-To-Work" payment for a week made, in addition to the regular State System Benefit otherwise payable for such week, to an Employe who has been on layoff for a prescribed number of weeks and returns to full-time work within a prescribed period, and also shall mean a lost time benefit which an Employe received under a Workers Compensation law or other law providing benefits for occupational injury or disease, while not totally disabled and while ineligible for a sickness and accident benefit under the Insurance Program. If an Employe receives a Workers Compensation benefit while working full time and a higher Workers Compensation benefit while on layoff from the Company, only the amount by which the Workers Compensation benefit is increased shall be included;

* * *

APPENDIX II

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

ALPHONSO LUMPKINS, et al., *Plaintiffs,*	
v.	
GENERAL MOTORS CORPORATION, and INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA	Cause No. 81-0402-C (5)
Defendants.	**Filed:** October 27, 1981

MEMORANDUM AND ORDER

This matter is before the Court on separate motions to dismiss of defendants General Motors Corporation (GMC) and International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW). Plaintiffs instituted this action seeking, *inter alia,* declaratory judgment and injunctive relief. The Court's jurisdiction is invoked pursuant to 29 U.S.C. § 185, *et seq.,* 28 U.S.C. §§ 2201-2202 and 28 U.S.C. § 1331. Lumpkins and other named plaintiffs claim to represent a class of employees similarly situated. Without ruling on the propriety of a class action in this instance, the Court will focus on the circumstances giving rise to Lumpkins' complaint as generally indicative of the situations of the other named plaintiffs.

This action is rooted in the financial problems that are currently plaguing the nation's automobile industry. Lumpkins, at the relevant times herein, was an hourly-rate employee of GMC and a member of UAW, Local 25. Lumpkins was laid off, effective December 24, 1979, as a result of the cessation of production of passenger cars at the GMC plant in St. Louis, Missouri. Pursuant to an agreement entitled "Supplemental Agreement Covering Supplemental Unemployment Benefit Plan" (the Supplemental Agreement), Lumpkins filed for and received supplemental unemployment benefits (SUBenefits). The Supplemental Agreement is included in the main collective bargaining agreement between GMC and UAW, effective September 14, 1979. Under the SUBenefit plan, an eligible employee receives supplemental income which, when added to State benefits and other compensation received by the participant, equals 95 percent of his weekly after-tax pay. (*See* The Supplemental Agreement, Art. II, Section 1). Lumpkins received SUBenefits for each week beginning with the week that ended on January 13, 1980 through the week that ended on July 6, 1980.

In May, 1980, the Secretary of Labor "certified" the employees of the St. Louis GMC plant as eligible for Trade Readjustment Allowances (TRA) pursuant to the Trade Act of 1974, 19 U.S.C. §§ 2101-2487. Benefits under TRA are distributed to those employees who, as determined by the Secretary, were separated from their employment as a result of foreign competition. The Secretary determined the TRA benefits to be retroactive to lay-offs occurring on or after June 1, 1979. Thus, Lumpkins was eligible for the TRA benefits. The Missouri Division of Employment Security began issuing retroactive TRA benefits in July, 1980.

In August, 1980, GMC management mailed Form GM-SUB-4 TRA-EST (4/80), to Lumpkins, advising him that he had been overpaid SUBenefits due to the TRA

benefits he had received. Upon Lumpkins' failure to return the overpayments, GMC began withholding amounts of his wages pursuant to Article II, Section 6 of the Supplemental Agreement.

Lumpkins objected to GMC's withholding of his wages and appealed to the "Local Committee" according to Article V, Section 3 of the Supplemental Agreement, asserting that TRA benefits are not deductible for SUBenefits and that GMC had failed to properly notify him of the overpayments. The Local Committee failed to resolve Lumpkins appeal. UAW Local 25 members appealed the Local Committee decision on Lumpkins behalf to the Joint Board of Administration. On August 28, 1981, the Board of Administration upheld the action taken by GMC. According to the terms of the Supplemental Agreement, the decision by the Board of Administration is final and binding on all the parties. (*See* Art. V, Section 3, Supplemental Agreement.)

Plaintiffs next initiated this action asserting, in essence, that defendant UAW failed to adequately represent plaintiffs' interest by failing to contest the GMC action and that defendant GMC unlawfully deducted the alleged overpayments pursuant to Missouri law, and should be enjoined from further deductions. Plaintiffs further assert that defendants are attempting to circumvent the purpose of the Trade Act of 1974 by requiring plaintiffs to repay amounts received in TRA benefits to the SUBenefit fund.

Defendants separately move to dismiss plaintiffs' complaint under Fed. R. Civ. P. 12(b)(6). In support of their motions defendants refer the Court to the affidavit of James H. Gleason, Supervisor, Benefit Plan Administration, GMC, the affidavit of Leonard R. Page, Associate General Counsel, UAW, and the brief of defendant GMC in opposition to plaintiffs' complaint for preliminary injunction. Since the Court has utilized those affidavits in conjunction with the pleadings of the parties to resolve

this matter, defendants' motions to dismiss will more properly be considered as motions for summary judgment. *Taylor v. Royal Insurance Co.*, 33 F.R.D. 521 (W.D. Mo. 1963); Fed. R. Civ. P. 12(b).

The general rule is that before a suit against a union for breach of its duty of fair representation may be brought in the courts, the member must first exhaust the available internal union remedies or show an adequate reason for failing to do so. *Brady v. Trans World Airlines, Inc.*, 401 F.2d 87, 104 (3d Cir. 1968), *cert. denied*, 393 U.S. 1048 (1969); *Miller v. Local 50, Am. Fed. of Grain Millers*, 468 F. Supp. 193, 198 (D. Neb. 1979); *Florey v. Air Line Pilots Ass'n. Intern.*, 439 F. Suppl. 165, 170 n.1 (D. Minn. 1977), *aff'd*, 575 F.2d 673 (8th Cir. 1978); *Emmanual v. Omaha Carpenters Dist. Council*, 422 F. Supp. 204, 207 (D. Neb. 1976), *aff'd*, 560 F.2d 382 (8th Cir. 1977); *Price v. International Bro. of Teamsters, Chauffeurs, Etc.*, 46 F.R.D. 18, 23 (E.D. Pa. 1969). Plaintiffs forward the inability to obtain assistance from UAW as the reason for failing to exhaust their internal remedies. The Court has previously noted that UAW processed the appeal to the Board of Administration on plaintiffs' behalf. That action taken by UAW, Local 25 strikes contrarily to plaintiffs' position. However, the Court will not dismiss the action for plaintiffs' failure to exhaust their internal remedies. Instead, the Court will rule on the merits in an effort to expedite the final resolution of this problem.

A breach of the statutory duty of fair representation occurs only when a union's conduct toward a member of the collective bargaining unit is arbitrary, discriminatory, or in bad faith. *Vaca v. Sipes*, 386 U.S. 171, 87 S.Ct. 903 (1967). Plaintiffs basically have two main arguments concerning this claim; (1) that UAW inadequately advised plaintiffs regarding TRA benefits which resulted in plaintiffs having to repay amounts to the SUBenefit fund; and (2) that UAW failed to represent plaintiffs in an action

to stop the deductions from plaintiffs' wages. The first contention does not raise the conduct of UAW to the level where the Court would find that the union's actions were arbitrary, discriminatory or done in bad faith. UAW filed for and received TRA benefits for its members. Plaintiffs have cited no authority that imposes a greater obligation on UAW. Mere conclusionary allegations fail to establish the requisite elements needed to support a claim for unfair representation. *Balowski v. U.A.W.*, 372 F.2d 829 (6th Cir. 1967); *cited with approval in Mavis v. Brotherhood of Railway, Airlines, and Steamship Clerks*, 585 F.2d 926, 930 8th Cir. 1978).

Plaintiffs second argument concerning UAW, which alleges that the union failed to represent them in their appeals to stop the payroll deductions, is totally without merit. Again, union members of the UAW, Local 25, appealed the Local Committee's decision to the Board of Administration on plaintiffs' behalf. Thus, in summary, plaintiffs have failed to establish a disputable case as to whether action or inaction by UAW regarding TRA benefits was arbitrary, discriminatory or in bad faith. Plaintiffs' claim that UAW failed to assist them in their appeals of the action taken by GMC is not supported by the record. Therefore the claims against UAW for unfair representation must be resolved in favor of the union.

Accordingly the decision of the Board of Administration must stand. Article V, Section 3(b)(2)(vi) of the Supplemental Agreement provides

> (vi) There shall be no appeal from the Board's decision. It shall be final and binding upon the Union, its members, the Employe, the Trustee, and the Company. The Union will discourage any attempt of its members to appeal and will not encourage or cooperate with any of its members in any appeal, to any Court or Labor Board from a decision of the Board, nor will the Union or its members by any other means attempt to bring about the settlement of any claim

or issue on which the Board is empowered to rule hereunder.

Absent a showing that UAW breached its duty of fair representation and that such breach seriously undermined the dispute resolution procedure, the decision of the Board of Administration is final. *Hines v. Anchor Motor Freight, Inc.*, 424 U.S. 554, 96 S. Ct. 1048 (1976); *United Steelworkers of America v. Enterprise Wheel & Car Co.*, 360 U.S. 593, 80 S. Ct. 1358 (1960). Inasmuch as the Court has determined in the instant case that UAW did not breach the duty of fair representation, the decision of the Board of Administration must stand and plaintiffs must repay any overpayments of SUBenefits.

Plaintiffs further maintain that GMC is subverting the purpose of the Trade Act by requiring plaintiffs to use TRA benefits to replenish the SUBenefit fund. Plaintiffs have failed to show the basis for this contention. The Court simply notes that Article II, Section 6[1] of the Supplemental Agreement requires that any *overpayment of SUBenefits* shall be returned. It strains reason to assume that TRA benefits necessarily must be used to repay the SUBenefit fund.

---

[1]Article II § 6 of the Supplemental Agreement provides in pertinent part:

Section 6, Benefit Overpayments

(a) If the Company or the Board determines that any Benefit(s) paid under the Plan should not have been paid or should have been paid in a lesser amount, written notice thereof shall be mailed to the Employe receiving the Benefit(s) and he shall return the amount of overpayment to the Trustee or Company whichever is applicable; provided, however, that no repayment shall be required if the cumulative overpayment is $3 or less or if notice has not been given within 120 days from the date the overpayment was established or created, except that no such time limitation shall be applicable in cases of fraud or willful misrepresentation.

One of the purposes of the Trade Act is to "provide adequate procedures to safeguard American industry and labor against unfair or injurious import competition, and to assist industries, firm(s), workers and communities *to adjust* to changes in international trade flow." (Emphasis added.) 19 U.S.C. § 2102(4). The SUBenefit plan is designed to provide 95 percent of weekly after-tax pay for the unemployed worker. Included in that 95 percent are any unemployment benefits derived from other sources. Such a goal is commensurate with that of the Trade Act to the extent that it aids the employe in *adjusting* to his unemployment. Plaintiffs' contention would lead to an anomalous result. Under plaintiffs' theory, workers would actually benefit more from their unemployment. According to the affidavit of Leonard Page, which has not been refuted by plaintiffs, an unemployed worker could actually receive between 160 and 190 percent of his usual take-home pay if he were permitted to collect his unemployment benefits in the manner prescribed by plaintiffs. Clearly such a result is in sharp contrast with the spirit and purpose of the Trade Act. Therefore the Court finds that the policy and purpose of the Trade Act will not be subverted by requiring plaintiffs to repay any overpayments of SUBenefits.

Plaintiffs' final argument asserts that the deductions of amounts from plaintiffs' wages by GMC, without plaintiffs' consent, violated Missouri law. MO. REV. STAT. § 432.030, *et seq*. Defendant GMC counters that federal law is applicable, which allows such deductions according to the Supplemental Agreement. The Court does not rule on the applicable law at this time inasmuch as the record reflects that plaintiffs indeed consented to the deductions. Article II, Section 6(b)(1) and (2) of the Supplemental Agreement provides:

> (b) If the Employe shall fail to return such amount of overpayment promptly:

(1) with respect to Benefits paid from the Fund, the Trustee shall arrange to reimburse the fund for the amount of overpayment by making a deduction from any future Benefits (not to exceed $20 from any 1 Benefit except in cases of fraud or willful misrepresentation) or Separation Payment otherwise payable to the Employe, or by requesting the Company to make a deduction from future Benefits of compensation payable by the Company to the Employe (not to exceed $30 from any 1 pay check except in cases of fraud or willful misrepresentation), or both; and

(2) with respect to Benefits paid by the Company, the Company shall arrange to reimburse the Trustee for the amount of overpayment by making a deduction from any future payments payable under Letter Agreements between the Company and the Union dated September 14, 1979 or from any future Benefits (not to exceed $20 from any 1 Benefit except in cases of fraud or willful misrepresentation) otherwise payable to the Employe by the Company, or to make a deduction from compensation payable by the Company to the Employe (not to exceed $30 from any 1 pay check except in cases of fraud or willful misrepresentation), or both.

The Company is authorized to make the deductions from the Employe's compensation as provided under subparagraph (1) and (2) of this subsection, and to pay the amounts deducted to the Trustee.

By applying for and receiving the SUBenefits, the plaintiffs agreed to comply with the provisions of the Supplemental Agreement. Plaintiffs cannot now request this Court to undo those acts to which they have agreed.

In conclusion, it bears reiteration that defendants' motions to dismiss are treated as if they were presented as motions for summary judgment. In a motion for summary judgment, the burden is on the movant to show there is no genuine issue of material fact and that movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). Based on matters in the record, many of which have not

been refuted by plaintiffs, the Court is of the opinion that defendants have met their burden. Therefore,

IT IS HEREBY ORDERED that summary judgment is GRANTED in favor of the defendants General Motors Corporation and International Union, United Automobile, Aerospace and Agricultural Implement Workers of America.

SO ORDERED.

Dated this 27th day of October, 1981.

/s/ CLYDE S. CAHILL

Clyde S. Cahill
United States District Judge

Office - Supreme Court, U.S.
FILED
JUN 9 1983

No. 82-1826

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

ARCHIE BOND, JR., *et al.*,
Petitioners,

vs.

GENERAL MOTORS CORP., *et al.*,
Respondents.

On Petition for Writ of Certiorari
To the United States Court of Appeals
For the Sixth Circuit

RESPONDENTS', INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW AND ITS LOCAL UNION NO. 1005, BRIEF IN OPPOSITION

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No. 82-1826

IN THE

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ARCHIE BOND, JR., *et al.*,
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RESPONDENTS', INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW AND ITS LOCAL UNION NO. 1005, BRIEF IN OPPOSITION

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Sixth Circuit is unreported and is fully presented in the Petition for Certiorari at pp. A-1 - A-3. The unreported opinion of the United States District Court for the Northern District of Ohio is set forth in the Petition for Certiorari at pp. B-1 - B-26.

JURISDICTION

The jurisdictional requisites adequately appear in the Petition for Certiorari.

STATUTE INVOLVED

Reference to the appropriate statute adequately appears in the Petition for Certiorari.

COUNTERSTATEMENT OF THE QUESTION PRESENTED FOR REVIEW

Whether the Court of Appeals for the Sixth Circuit correctly held that the resolution of a grievance by a joint labor management committee is not subject to judicial review where the grievance was resolved pursuant to an exclusive, final, binding and nonappealable method agreed to by the parties.

COUNTERSTATEMENT OF THE CASE

Petitioners are employees of Respondent General Motors Corporation (hereinafter "GM") and are also members of Respondent Unions, the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW and its Local Union No. 1005 (hereinafter "UAW").

Petitioners were laid off from their employment at various times in 1979 and 1980. During these periods of unemployment, each of the Petitioners applied for and received supplemental unemployment benefits (hereinafter "SUB") pursuant to an agreement between GM and the UAW entitled "Supplemental Agreement Covering Supplemental Unemployment Benefit Plan" (hereinafter "Supplemental Agreement").

Contemporaneous with Petitioner's layoffs, the UAW filed petitions with the Secretary of Labor seeking adjustment assistance (hereinafter "TRA") for its members pursuant to the Trade Act of 1974, 19 U.S.C. Section 2101 et. seq. The relevant portions of the Trade Act provide a scheme whereby workers who have been separated from their employment because of foreign competition are guaranteed seventy percent (70%) of the their average weekly wage during the period of separation.

In May of 1980, the Department of Labor issued a Certificate of Eligibility that included the location where Petitioners' worked.

Subsequently, Petitioners applied for and received TRA benefits for periods of time in which they were laid off from GM's facility. Due to the lengthy time period required to process TRA claims, two of the Petitioners received a lump sum payment of retroactive TRA benefits for the same weeks in which they had already received SUB benefits. As a result, two of the Petitioners received in excess of one hundred percent (100%) of their normal take-home pay, despite the fact that they were unemployed.

Because of the receipt of TRA benefits, GM determined that two of the Petitioners had received an overpayment of SUB benefits. Pursuant to the Supplemental Agreement, they were notified of the overpayment but Petitioner Bond refused to make restitution. As a result, GM, in accordance with the Supplemental Agreement, began deducting Thirty Dollars ($30.00) per week from Petitioner Bond's paychecks.

Petitioner Bond filed a grievance protesting the Company's action, alleging, among other grounds, that he had not been notified of the overpayment within one hundred twenty (120) days of when the overpayment was established.

Grievances, under the Supplemental Agreement, are handled pursuant to a separate grievance/appeals procedure. There is a two step process wherein an employee, and not the UAW, may challenge the determination of SUB benefits by filing a written appeal with the Local Committee. The Local Committee is composed of an equal number of GM and UAW representatives. The Local Committee, by a unanimous vote, has the power to finally resolve an employee's appeal. Only if the appeal is not resolved in this matter may an employee obtain the right to appeal to the second and final level, the Board of Administration. The Board is comprised of three UAW representatives, three

GM representatives and an impartial Chairman. The impartial Chairman only votes if an issue cannot be resolved by a majority of the other members of the Board. The Supplemental Agreement mandates that the appeals procedure is final, binding and non-appealable.

The Local Committee unanimously determined that Petitioner Bond's grievance had no merit and denied it. More specifically, the Local Committee held that Petitioner Bond's overpayment was established in September 1980 and he was notified of that fact in October, well within the 120 day notice period. Under the agreement, therefore, Petitioner Bond was not entitled to pursue his grievance to the Board of Administration.

The Board of Administration itself has subsequently addressed the issue of when an overpayment is established or created. (App. pp. A-1 - A-23). In two other SUB overpayment cases the Board concluded that the earliest possible date an overpayment is established or created is the date that GM becomes aware that TRA benefits causing the overpayment were in fact paid. (App. pp. A-5 and A-17) Here, Petitioner Bond and GM were notified in September of the overpayment and the letter seeking recoupment was sent out in October, well within the 120 days.

Following the resolution of Petitioner Bond's grievance, he and the other Petitioners filed the instant action pursuant to 29 U.S.C. Section 185, Section 301 of the Labor Management Relations Act (hereinafter "LMRA"). Petitioners sought damages against GM for breach of the collective bargaining agreement and against the UAW for a breach of the duty of fair representation.

Respondents GM and the UAW filed motions to dismiss and the District Court dismissed Petitioners' complaint, concluding that Petitioner Bond's grievance had been finally resolved pursuant to the grievance procedure outlined in the Supplemental Agreement. The District Court also concluded that Petitioners

had been unable to demonstrate a breach of the duty of fair representation. The United States Court of Appeals for the Sixth Circuit affirmed the judgment of the District Court concluding that the actions of the UAW and GM were in accordance with the contractual provisions of their agreement and adopted the analysis of the legal issues as presented by the District Court.

Petitioners are not challenging the conclusion of the District Court and the Court of Appeals that there was no breach of the duty of fair representation. Petitioners are urging instead that this Court address the issue of whether an employee is entitled to have his grievance heard by an impartial arbitrator or in the alternative, by a district court even where there is no breach of the duty of fair representation.

REASONS FOR DENYING THE WRIT

I. The Courts Below Explicitly Followed And Correctly Applied The Controlling Decisions Of This Court.

The premise of Petitioners' argument is that the SUB appeal procedure should be subject to judicial review because the procedure is somehow not procedurally "fair". In support of their contention, Petitioners argue that a joint committee which resolves grievances is inherently not as effective as an impartial arbitrator in resolving grievances. Implicit in Petitioners' arguments is the novel idea that employees have an absolute right to have grievances arbitrated regardless of the merits of the grievances, and regardless of the collective bargaining process. These contentions reflect a true misunderstanding of Federal labor law.

In the case at bar, GM and the UAW contractually agreed to certain procedures for the resolution of grievances pertaining to the Supplemental Agreement. Here, Petitioner Bond's grievance was rejected upon consideration at Step I of the process.

Since the parties to the contract have agreed to be bound by this method of dispute resolution, Petitioners must meet a heavy burden in challenging that procedure through judicial review. Federal law requires that judicial deference be given to the grievance procedure disputed here. This strict rule is essential to maintain the system of industrial conflict resolution first explicated by this Court in the Steelworkers Trilogy. *United Steelworkers of America* v. *American Manufacturing Co.*, 363 U.S. 564 (1960); *United Steelworkers of America* v. *Enterprise Wheel and Car Corp.*, 363 U.S. 593 (1960); *United Steelworkers of America* v. *Warrior and Gulf Navigation Co.*, 363 U.S. 574 (1960).

Nowhere is this policy set forth with greater clarity than in the Labor Management Relations Act itself, 29 U.S.C. Section 173(d), which provides in pertinent part:

> "*Final adjustment by a method agreed upon by the parties* is hereby declared to be the described method for settlement of grievance disputes arising over the *application or interpretation* of an existing collective bargaining agreement." (Emphasis supplied).

In its dismissal of Petitioners' claim, the District Court, affirmed by the Sixth Circuit Court of Appeals, correctly and cogently restated the applicable Federal law as follows:

> "It can no longer be questioned that federal policy favors resolution of disputes by a method agreed upon by parties to a collective bargaining agreement. *Hines* v. *Anchor Motor Freight, Inc.*, 424 U.S. 554, 562-63, 96 S. Ct. 1048, 1055-1056 (1976); *United Steelworkers of America* v. *American Manufacturing Co.*, 363 U.S. 564, 80 S. Ct. 1343 (1960); *United Steelworkers of America* v. *Enterprise Wheel and Car Corp.*, 363 U.S. 593, 80 S. Ct. 1358 (1960); *United Steelworkers of America* v. *Warrier and Gulf Navigation Co.* 363 U.S. 574, 80 S. Ct. 1347 (1960).

> "In order to further this policy, 'courts ordinarily defer to collectively bargained dispute resolution procedures when the party's dispute arises out of the collective bargaining process,' *Barentine* v. *Arkansas Best Freight System*, ____ U.S. ____, 101 S. Ct. 1437, 1442 (1981); *Hines* v. *Anchor Motor Freight, Inc. supra* at 562-63, 96 S. Ct. at 1055-56; and, absent particular circumstances, the award of the arbitrator is final and binding if the contract so provides. See e.g. *Humphrey* v. *Moore*, 375 U.S. 335, 351, 84 S. Ct. 363, 372; *United Steelworkers of America* v. *Enterprise Wheel and Car Co., supra* at 598-99, 80 S. Ct. 1361-62; *Morris* v. *Werner Continental, Inc.*, 466 F. 2d 1185, 1188-89, (6th Cir. 1972) *cert. denied* 411 U.S. 963, 93 S. Ct. 2144 (1973)." (Petition at p. B-15 - B-16).

In their brief, Petitioners attempt to attack the finality of the parties' chosen grievance resolution procedure by attacking the procedure itself, rather than its particular application, contrary to the teachings of *Hines* v. *Anchor Motor Freight, Inc.*, 424 U.S. 554 (1976). Petitioners contend that a decision by a joint union-management committee is not as binding as a decision by an arbitrator. This argument simply has no merit. The District Court below correctly noted as follows:

> "Moreover, contrary to plaintiffs' assertions, decision of a joint committee selected by the parties for definitive settlement of grievances is accorded the same degree of finality as a decision of a neutral arbitrator. See e.g. *Hines* v. *Anchor Motor Freight, Inc., supra; Humphrey* v. *Moore, supra; General Drivers, Warehousemen and Helpers, Local Union No. 89* v. *Riss and Co.*, 372 U.S. 517, 83 S. Ct. 789 (1963)." (Petition at p. B-16 - B-17).

In *General Drivers, Warehousemen and Helpers, Local Union No. 89* v. *Riss and Co.*, 372 U.S. 517 (1963), this Court squarely held that a decision by a joint committee was entitled to the same weight as that of an arbitrator. This Court stated as follows:

> "Thus, if the award at bar is the parties' chosen instrument for the definitive settlement of grievances under the Agreement, it is enforceable under Section 301. And if the Joint Area Cartage Committee's award is thus enforceable, it is of course not open to the courts to reweigh the merits of the grievance." 372 U.S. at 519.

Petitioners contentions are simply devoid of merit. The underlying premise of their petition is the existence of a "right to arbitrate" grievances. That premise has no basis in law. Furthermore, despite Petitioners' contentions, the Supplemental Agreement does provide for the impartial chairman to decide the merits of grievances where a majority of the National Board could not do so. In the instant case, however, because Petitioner Bond's grievance was finally resolved by the Local Committee, the National Board and its impartial chairman never had to consider Petitioner Bond's appeal.

Petitioners further claim that judicial deference to the Local Committee's decision should not be afforded because GM and the UAW have a financial interest in the outcome of the grievance and, therefore, they cannot be impartial arbitrators. This claim is specious for two reasons. First of all, Federal law does not require use of "impartial" parties because it seeks to encourage an outcome that the parties themselves, as the draftsmen of the collective bargaining agreement, can live with. Secondly, neither GM nor the UAW have a pecuniary interest in the outcome of Petitioners' grievance. GM and the UAW are simply seeking a result that is beneficial to all of the potential recipients of SUB benefits. Depletion of the fund by the individuals who collect well over 100% of their take-home pay depletes the SUB fund which would result in the denial of benefits to other UAW members.

The frivolous nature of Petitioners' claim becomes abundantly clear when they argue that the alleged deficiencies in the grievance procedure empower the Court to reweigh the merits of the grievance, even without a showing of the breach of the

duty of fair representation. Federal labor law recognizes but one exception to the general rule of finality accorded to contractual grievance resolution and that is where a union breaches its duty of fair representation. *Hines* v. *Anchor Motor Freight, supra; Vaca* v. *Sipes*, 386 U.S. 171 (1967). See also *Ruzicka* v. *General Motors*, 649 F. 2d 1207 (6th Cir. 1981). Petitioners are not disputing the findings of the District Court and the Sixth Circuit that there has been no breach of the duty of fair representation. Yet they continue to maintain that they are entitled to have a Court decide the merits of their case despite the fact the UAW handled the matter properly and despite the fact that the grievance was finally settled pursuant to a procedure agreed to by GM and the UAW.

In summary, there is simply no basis in Federal law that an employee has an absolute right to have a grievance arbitrated before an "impartial" third party nor is there any basis in law to claim that the federal courts should consider the merits of grievances finally and totally settled pursuant to the contract entered into between the parties. Therefore, there is simply no basis for granting certiorari in this case.

II. The Decisions Relied Upon By The Petitioners Are Distinguishable On Their Facts And On The Law.

Petitioners have cited a number of cases for the general proposition that if a grievance procedure is inadequate or unfair, then an employee should be entitled to proceed with his or her claim in district court. The cases relied upon by the Petitioners do not stand for this proposition. The cases cited by the Petitioners, namely *Clayton* v. *UAW*, 451 U.S. 679 (1981), *Geddes* v. *Chrysler Corp.*, 608 F. 2d 261 (6th Cir. 1979), *Tinsley* v. *United Parcel Service*, 665 F. 2d 778 (7th Cir. 1981), *Farmer* v. *ARA Services, Inc.*, 660 F. 2d 1096 (6th Cir. 1981) are all cases which deal with whether an employee should first have to exhaust his internal union procedures before commencing suit under Section 301 of the LMRA in suing his employer for

breach of contract and his union for a breach of the duty of fair representation. These cases are not ones that deal with the adequacy or inadequacy of the grievance procedure itself, but deal instead with whether the union's internal union procedure is adequate for the purposes of affording an employee the relief that he might be able to obtain if the underlying grievance had been pursued by the union.

The procedure in question, in the instant case, was not an internal union procedure, but rather a contractually agreed to grievance procedure between GM and the UAW designed for the purposes of resolving grievances under the Supplemental Agreement. Therefore, the Petitioners' reliance upon *Clayton* and its progeny to attack the grievance procedure here, is totally misplaced.

The Petitioners also rely upon two other cases which have absolutely nothing to do with the issues involved in the instant case. Petitioners cite *NLRB* v. *Marine Workers*, 391 U.S. 418 (1968) and *Helton* v. *NLRB*, 656 F. 2d 883 (D.C. Cir. 1981) for the proposition that it is not in the interest of labor policy to coerce employees to utilize the Supplemental Agreement's procedure without any possible resort to pursuing their rights in Court. *Marine Workers* was concerned with an unfair labor practice charge filed against a union for allegedly expelling one of its members for filing an earlier unfair labor practice charge before pursuing his internal union procedures. The instant case has absolutely noting to do with unfair labor practice charges, the pursuit of internal union procedures nor with a union taking disciplinary action against a member for pursuing his rights in any forum. Likewise, *Helton* was concerned with an unfair labor practice charge brought against a union which sought to prevent a member from posting materials critical of the union on a union bulletin board. Again, the instant case has nothing to do with unfair labor practice charges nor any disciplinary action taken against one of the UAW's members. Petitioners' reliance upon these cases is again completely misplaced.

Finally, the Petitioner relies upon *Glover* v. *St. Louis-San Francisco Railway Co.*, 393 U.S. 324 (1969) for the proposition that an employee should not have to submit his complaint to the same group that he is suing. *Glover* was a case brought pursuant to the Railway Labor Act where this Court determined that black employees who were claiming that members of the union and the employer had discriminated against them on the basis of race need not exhaust the grievance procedure, for it would be futile to do so. Petitioners' application to this Court is not concerned with exhaustion at all, but rather is concerned only with whether employees should be able to sue their employer and their union despite the fact that these parties had agreed, without any proof of unlawful discrimination, that their grievance had absolutely no merit. Again, Petitioner relies on a case that has no applicability to the instant one.

In summary, the opinions relied upon by the Petitioner are concerned with matters that are factually and legally distinguishable from the instant one and provide no basis for their request for a Writ of Certiorari.

III. The Results Urged By The Petitioners Would Be Totally Inequitable And Would Destroy The Present Structure of Labor Management Relations.

Petitioners are apparently seeking to have a court decide that their interpretation of a provision of the Supplemental Agreement is the correct one. Petitioners seek to argue that the overpayment at issue was "established" more than 120 days prior to GM seeking recoupment. The Local Committee determined that Petitioner Bond's overpayment was established in September of 1980 when it was determined that he would receive a specific amount of SUB benefits and GM was so notified. Thus, when Petitioner Bond was notified of the overpayment in October of 1980, that was well within the 120 day period. This interpretation of the Supplementary Agreement has also been subsequently upheld by the Board of Administration in two other cases.

(App. p. A-5 and A-17). The Petitioners' contentions have thus been totally rejected, not only by the Local Committee, but by the parties to the Supplemental Agreement through the Board of Administration.

What the Petitioners ultimately seek is a ruling from a court which would permit them to collect, while they were not working, well over 100% of what they were making while employed by GM. The overpayment, here, if permitted, would allow the Petitioners and the national class that they seek to certify to receive unemployment compensation, SUB benefits and TRA benefits amounting to well over a 100% of their wages while working. Not surprisingly, the Board of Administration, seeking to protect the integrity of the SUB fund for employees to be laid off in the future, sought to recoup the SUB money to the benefit of all GM employees and UAW members so that they might receive the 95% of what they were making while they were working. Instead, the Petitioners seek a result that would permit some to receive well over 100%, thus depleting the SUB Plan and thus depriving others of all or a portion of their SUB benefits.

Furthermore, the result urged by the Petitioners with regards to the grievance procedure itself would totally destroy labor management relations as we presently know it. If the result urged by the Petitioners was adopted, recalcitrant employees could sue their employer and their union on any grievance resolved pursuant to a grievance procedure simply because they disagreed with those results. It would no longer be necessary for an employee to prove or even allege a breach of the duty of fair representation because employees would only have to demonstrate that the procedure did not permit the arbitration of their grievances. The parties to a collective bargaining agreement would no longer be able to control the terms and conditions of their agreement. It would be for employees and the courts to determine the meaning and applicability of terms included in collective bargaining agreements. The courts would

thus be flooded with Section 301 suits brought by individuals seeking new interpretations of those agreements despite the fact that the parties who drafted the terms agree as to their meaning. On this ground alone, Petitioners' request for a Writ of Certiorari must be denied.

CONCLUSION

For the reasons set forth herein, Respondent UAW respectfully submits that the Writ of Certiorari should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of June 1983, a copy of the foregoing Brief was mailed by regular U. S. Mail, postage prepaid, to Frank J. Groh-Wargo and John J. Wargo, Wargo, Wargo and Walters Co., L.P.A., 43 East Bridge Street, Berea, Ohio 44017, Attorneys for Petitioners and to Dennis M. Kelly and Janet L. Miller, Jones, Day, Reavis & Pogue, 1700 Union Commerce Building, Cleveland, Ohio 44115, Attorneys for Respondent General Motors.

By EUGENE GREEN,
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Attorneys for Respondents UAW

APPENDIX A

Board of Administration Case No. 1276

NOTICE OF BOARD OF ADMINISTRATION DECISION

Supplemental Unemployment Benefit Plan Pursuant To Agreement Between General Motors Corporation And The UAW

Division: GM Assembly Division

Location or Plant: Leeds, Missouri

Address: 6817 Stadium Drive, Kansas City, MO 64129

Local Committee Case No. —

Employe Involved: Bennie McKenzie (et al)

DECISION OF BOARD

It is the determination of the Board of Administration that the amount of the SUBenefit overpayment stated on the "Determination of Overpayment of SUBenefits By Reason of Receipt of Trade Readjustment Allowance Benefits" form previously furnished the claimants is a valid amount due and owing to the SUB Trust Fund. The claimants, therefore, are required to repay such amount of overpayment in accordance with the SUB Plan Provisions.

(Signatures Illegible)

Date July 23, 1981

GM-UAW

SUB BOARD OF ADMINISTRATION

Bennie McKenzie (et al), GM Assembly Division - Leeds Plant

Re: Notice of Overpayment - 120 Day Time Limit

STATEMENT OF FACTS

On April 21, 1981, the GM-UAW Board of Administration advised Bennie McKenzie, Anthony McKenzie, Gary White and Edward Reidlinger (hereafter "claimants") that an appeal would be accepted by the Board from the unanimous determination of the Local SUB Committee. On May 6, 1981, the Board received an "appeal"[1] from the above named individuals and Jane Tuttle. Because Jane Tuttle has never filed an appeal with the Local SUB Committee, she cannot institute an appeal now at the Board level.

The GM-UAW Supplemental Unemployment Benefit (SUB) Plan is a private plan, negotiated by the UAW and GM, to supplement the governmental unemployment insurance system, and covers approximately 430,000 employes. It provides for weekly SUBenefits to eligible employes for periods of unemployment. The weekly SUBenefit for full weeks of layoff is equal to the difference between 95% of weekly after-tax pay and the state system benefit (less $12.50 for work-related expenses not incurred and other earnings).[2] Since 1970, Article IX, Section 23 of the Plan has specifically defined "State System" to include any "federal laws for paying benefits to persons on account of their unemployment (such as the Trade Readjustment Allowances provided under the Federal Trade Expansion Act of 1962, as amended, and the Trade Act of 1974)". This definition was clarified in the Plan language to

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[1] The "appeal" consists of a cover sheet enclosing approximately three inches of pleadings filed by plaintiffs in McKenzie, et al. v. General Motors Corporation, et al., (Civil Action No. 80-0966-CV-W-6 U.S. Disrict Court, W.D. of Missouri). Attempting to glean from those pleadings those matters which could have been presented to the Board has caused some delay.

[2] Article II, Section 1(a) (the full text of the relevant Plan provisions and Trade Act of 1974 citations are attached as an Appendix).

make it clear that Trade Readjustment Allowances (TRA) were to be treated the same as state unemployment compensation (UC) benefits. To have provided otherwise under the Plan would result in an unemployed worker eligible for state UC benefits, TRA and SUB receiving much more in benefits when unemployed than in wages when working full time, which is not in accordance with the SUB Plan's basic purpose.

In January 1980, the UAW petitioned for worker adjustment assistance under the Trade Act of 1974. By decision dated April 25, 1980, the U.S. Department of Labor certified the GMAD Leeds plant in Kansas City, Missouri, with an impact date of October 1, 1979 (TA-W-7078).[3]

In the second week of May 1980, claimants made application for TRA benefits with the state agency. On or after May 21, 1980, claimants received their retroactive TRA payment for all weeks of unemployment going back to the October 1, 1979 impact date.

Claimants had previously received weekly SUBenefits in supplementation of state UC benefits for these same weeks of unemployment covered by the retroactive TRA payments. With the TRA benefits paid in addition to the state UC and SUBenefits, the claimants were then in receipt of approximately 145% of their weekly after-tax pay for the same week of unemployment. After the Company became aware of the payment of the retroactive TRA benefits, pursuant to its authority under Article II, Section 6(a) of the Plan, it determined that a

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[3] Workers laid off on or after October 1, 1979 were eligible for the weekly TRA benefit - 70% of average weekly wage not to exceed the national average weekly wage, currently $289 - for all weeks of unemployment after October 1, 1979. (Section 232 of Trade Act of 1974.)

SUBenefit overpayment had been "established or created". A notice of the SUBenefit overpayment was sent to the claimants on September 9, 1980, within 120 days of the date the Company had ascertained that the claimants had received their TRA benefits in late May 1980. The overpayment amounts owed ranged from $919.73 for B. McKenzie to $1,722.44 for E. Reidlinger.

When claimants failed to make voluntary repayments to the SUB Trust Fund as requested in the overpayment notice, the Company commenced weekly payroll deductions of $30 per week for transfer to the SUB Trust Fund, pursuant to Article II, Section 6(b) of the Plan. Under the Plan, such payroll deductions continue until the total overpayment is recovered.

DISCUSSION

From the documentation submitted by the claimants, it appears that the claimants make the following arguments:

1. The Board did not send claimants the notice of overpayment within 120 days from the date the overpayment was "established or created".

2. The recovery of overpayments by payroll deductions is a violation of the Trade Act of 1974 and its regulations (29 C.F.R. Section 91.60).

3. The appeal procedures under the SUB Plan do not satisfy the requirements of the Employee Retirement Income Security Act (ERISA) of 1974.

As to the first argument, the Board does not agree that the phrase "from the date the overpayment was established or created" means the date that the Department of Labor issues its certification. A certificaiton itself does not establish or create a SUB overpayment. The SUB overpayment cannot be "established or created" until the employe applications to the state (or other applicable governmental agency) are processed

for determinations with respect to TRA benefit eligibility and amount, and benefit checks are issued. The SUBenefit overpayments are "established or created" as of the date the Company becomes aware that the TRA benefits which caused the overpayment were paid. This interpretation is based on the fact that certification of the plant does not automatically mean that any individual employe of that plant receives TRA. In order to receive TRA, an individual employe must show that he or she was laid off for at least one week:

1. after the certification's impact date;
2. from adversely affected employment;
3. and in the 52 week period preceding that layoff, received wages or $30 or more for at least 26 weeks.[4]

Some employes cannot meet all of these requirements. Moreover, the state agency's ability to process thousands of applications and begin making payments varied considerably from state to state. A few states did not begin making significant payments until July 1980 or later.

Under the claimants' interpretation - that the overpayment was "established or created" as of the date of the certification issued by the Department of Labor - the Company would have been required to stop SUB payments immediately as of April 25, 1980. While this would have reduced a significant portion of the overpayment amount and relieved the recovery problem, it would have resulted in unemployed workers receiving only state UC while waiting for weeks and months for the state to process their TRA applications. Those employes ultimately found not eligible for TRA would have been denied weekly SUBenefits to which they were rightfully entitled. Claimants' proposed interpretation is neither a reasonable view of the words "established or created", nor is it fair to SUB participants.

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[4] Section 231 of Trade Act of 1974.

The purpose of the 120-day period is to place a time limit on the Company or Board's authority to notify an employe that a SUBenefit overpayment exists. The time limit begins with the date the overpayment is "established or created" and ends 120 days thereafter. Once an employe has been notified of an overpayment in a timely fashion, there are no time limits which preclude the Board or the Company from seeking repayment of prior SUB payments, i.e., the SUB payment declared to be an overpayment could have been received well before the start of the 120-day period.

Claimants also argue that the Board approach is not consistent with its application of the phrase "received or receivable"[3], i.e., an employe not applying for TRA *may still have* an overpayment because the state system benefit (TRA) is "receivable".

The purpose of this provision is to encourage employes to file for state system benefits for which they could be eligible. The fact is that the vast majority of employes in a certified plant meet all eligibility requirements for TRA. The Board therefore finds nothing inconsistent in presuming certified employes eligible for such TRA benefits and declaring SUB overpayments when an employe refuses to apply for TRA benefits. The employe can negate the overpayment determination by submitting satisfactory evidence of a TRA denial. In non-application situations, the Board does not use the date of certification as the date from which the SUB overpayment was "established or created".

* * *

The Board now addresses the claimants' second and third appeal arguments alleging violations of federal law. Although the Board's authority is limited to interpreting the Plan document, the following responses and observations are made:

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[3] Article II, Section 3(a)(1).

After careful review, the Board cannot discern any possible violations of the Trade Act of 1974 or ERISA. From claimants' pleadings, the Board notes that the U.S. Secretary of Labor, charged with administering these provisions of the Trade Act of 1974, has rejected claimants' second argument. Section 91.60 of 29 C.F.R. does provide that TRA benefits are exempt from levy, execution, attachment, garnishment, etc. However, the Company, by the recovery of SUB overpayments, is not attempting to levy or garnish TRA benefits—TRA benefits remain intact. The Company seeks only the recovery of SUBenefits previously paid. It is also clear that employes may repay SUBenefit overpayments from his or her funds derived from any source.

As to the third argument, claimants' right of review now has been honored through two separate appeal stages: the Local SUB Committee and the GM-UAW Board of Administration. ERISA requires a full and fair internal review process which addresses the issues raised and renders a written decision; it does not guarantee a *successful* appeal.

* * *

The Board also notes that claimants have not been treated any differently from the thousands of fellow employes who received TRA benefits in dozens of GM plants across the United States in 1980. Indeed, these same procedures were also used for the Trade Act of 1974 certifications issued in 1975 by the U.S. Department of Labor.

The Board's review of claimants' legal pleadings shows no justification for permitting them to receive far more income while unemployed than while working. This was not the intent of the parties to the Plan, and the Board cannot interpret the Plan to support the claimants' position.

Regarding the claimants' contention that they are being improperly made a conduit of payments to General Motors, the

weekly payroll deductions made by the Company are in fact paid directly to the Trustee and deposited to the SUB Trust Fund for the *exclusive* benefit of present and future SUB claimants (including these claimants if they are eligible).

Claimants say that General Motors does not have to make contributions once the maximum funding level has been reached. Maximum funding has not been reached since January 1967. At the time claimants began their lawsuit (October 1980), the fund was at 3.6% of maximum funding. As of July 1981, the funding level is 32%. With the present high level of layoffs, it is impossible to predict when, if ever, the maximum funding level will be reached.

DISPOSITION BY GM-UAW BOARD OF ADMINISTRATION

The Board of Administration has reviewed the information forwarded in connection with this appeal case, and, based upon the facts submitted, has arrived at the following:

1. This case originally was resolved by the Local Committee in accordance with the provisions of Article V, Section 3 of the 1979 GM-UAW SUB Plan.

2. In accordance with GM-UAW SUB Plan Board of Administration letter dated April 21, 1981, the claimants were advised, in part, that:

   ". . .the GM-UAW SUB Plan Board of Administration has been authorized by the parties to the current 1979 GM-UAW SUB Plan, to accept your appeal from the unanimous determination of the Local SUB Committee at the GMAD-Leeds plant in Kansas City, Missouri. The Local Committee's determination concerned the issue of recovery of SUBenefit overpayment amounts caused by your entitlement to Trade Readjustment Allowance (TRA) Benefits which are payable under the federal Trade Act of 1974.

"This special authorization is in recognition of the importance of this issue and its national impact at various General Motors locations. This Board of Administration, therefore, will entertain your appeal, consider all facts and arguments presented and make its final determination. ...

"The Board of Administration will consider all memoranda submitted and make its determination based on the written record. ..."

3. Article II, Section 1(a) provides that a Regular Benefit payable to an eligible employe for any week shall be an amount which, when added to his State Benefit and Other Compensation, will equal 95% of his after-tax pay, minus $12.50.

4. Article II, Section 3(a)(1) states that an Employe's State Benefit and Other Compensation for a week includes the amount of State System Benefit received or receivable.

5. Article IX, Definition (23) defines "State System" to include the Trade Readjustment Allowances provided under the Trade Act of 1974.

6. The overpayment notice required under Article II, Section 6(a) was issued within the specified time limits.

7. Article V, Section 3(b)(2)(vi) provides "There shall be no appeal from the Board's decision. It shall be final and binding upon the Union, its members, the Employe, the Trustee, and the Company."

Accordingly, it is the determination of the Board of Administration that the amount of the SUBenefit overpayment stated on the "Determination of Overpayment of SUBenefits By Reason

of Receipt of Trade Readjustment Allowance Benefits" form previously furnished the claimants is a valid amount due and owing to the SUB Trust Fund. The claimants, therefore, are required to repay such amount of overpayment in accordance with the SUB Plan Provisions.

Issued and approved on July 23, 1981 by the Board of Administration.

(Signatures Illegible)

APPENDIX

I. UAW -GM SUB Plan

Article II, Section 3(a)(1) - "An Employe's State Benefit and Other Compensation for a Week means the amount of State System Benefit received or receivable by the Employe for the Week. . ."

Article IX, Definition (23) - ". . . 'State System Benefit' means an unemployment benefit payable under a *State System*. . ." (emphasis added)

Article IX, Definition (23) - " 'State System' means any system or program established pursuant to any state or federal law for paying benefits to persons on account of their unemployment under which a person's eligibility for benefit payments is not determined by application of a 'means' or 'disability' test. State System also includes: (a) any system or program established by law to supplement, replace or extend the benefits available under any state or federal laws for paying benefits to persons on account of their unemployment (such as the Trade Readjustment Allowances provided under the Federal Trade Expansion Act of 1962, as amended, and the Trade Act of 1974). . ."

Article II, Section 6(a) - "If the Company or the Board determines that any Benefit(s) paid under the Plan should not have been paid or should have been paid in a lesser amount, written notice thereof shall be mailed to the Employe receiving the Benefit(s) and he shall return the amount of overpayment to the Trustee or Company whichever is applicable; provided, however, that no repayment shall be required if the cumulative overpayment is $3 or less or if notice has not been given within 120 days from the date the overpayment was established or created, except that no such time limitations shall be applicable in cases of fraud or willful misrepresentation."

Article II, Section (6)(b) - "If the Employe shall fail to return such amount of overpayment promptly: (1) with respect to Benefit paid from the Fund, the Trustee shall arrange to reimurse the Fund for the amount of overpayment by making a deduction from any future Benefits (not to exceed $20 from any 1 Benefit except in cases of fraud or willful misrepresentation) or Separation Payment otherwise payable to the Employe, or by requesting the Company to make a deduction from future Benefits or compensation payable by the Company to the Employe (not to exceed $30 from any 1 check except in cases of fraud or willful misrepresentation), or both."

II. **Trade Act of 1974**

PART I - TRADE READJUSTMENT ALLOWANCES

SEC. 231. QUALIFYING REQUIREMENTS FOR WORKERS

Payment of a trade readjustment allowance shall be made to an adversely affected worker covered by a certification under subchapter A who files an application for such allowance for any week of unemployment which begins after the date specified in such certification pursuant to section 223(a), if the following conditions are met:

(1) Such worker's last total or partial separation before his application under this chapter, occurred—

(A) on or after the date, as specified in the certification under which he is covered, on which total or partial separation began or threatened to begin in the adversely affected employment, and

(B) before the expiration of the 2-year period beginning on the date on which the determination under section 2273 was made, and

(C) before the termination date (if any) determined pursuant to section 223(d); and

(2) Such worker had, in the 52 weeks immediately preceding such total or partial separation, at least 26 weeks of employment at wages of $30 or more a week in adversely affected employment with a single firm or subdivision of a firm, or, if data with respect to weeks of employment are not available, equivalent amounts of employment computed under regulations prescribed by the Secretary.

SEC. 232. WEEKLY AMOUNTS.

(a) Subject to the other provisions of this section, the trade readjustment allowance payable to an adversely affected worker for a week of unemployment shall be—

(1) 70 percent of his average weekly wage (but not in excess of the average weekly manufacturing wage), reduced by

(2) 50 percent of the amount of the remuneration for services performed during such week.

CODE OF FEDERAL REGULATIONS

S91.60 Exemption

Any assignment, pledge, or encumbrance of any right to adjustment assistance which is or may become due and payable under this Part 91 shall be void; and such right to adjustment assistance shall be exempt from levy, execution, attachment, garnishment, order for the payment of attorney fees, offset or recovery of overpayments under any law other than the Act, or any other remedy whatsoever provided for the collection of debt whether owed to the United States, a State, or a person; and adjustment assistance received by an individual shall be exempt from any remedy whatsoever for the collection of all debts, necessaries furnished to such individual or the individual's family during the time when such individual was unemployed. Any waiver of the exemption provided for in this section shall be void.

APPENDIX B

GENERAL MOTORS CORPORATION

August 28, 1981

James E. McDaniel, Esquire
818 Olive Street-1400
St. Louis, Missouri 63101

Morris J. Levin, Esquire
Levin, Weinhaus & Ely
515 Olive Street
St. Louis, Missouri 63101

Re: Alphonso Lumpkins, et al.
GM Assembly Division - St. Louis Plant

Dear Sirs:

Enclosed please find a copy of the decision from the GM-UAW SUB Board of Administration. The decision was issued and approved on August 28, 1981.

Very truly yours,

OTIS M. SMITH
General Counsel

David M. Davis
Attorney

DMD:dep
Enclosure

cc: Leonard Page, Esquire

SUB BOARD OF ADMINISTRATION

Alphonso Lumpkins (et al), GM Assembly Division - St. Louis Plant

Re: Notice of Overpayment - 120 Day Time Limit

BACKGROUND

A properly filed Local Committee Appeal to the GM-UAW Board of Administration was received by the Board on June 4, 1981. THis is a test case for all similarly situated GMAD - St. Louis employes.

The Board has previously issued a decision in an appeal arising from GMAD - Leeds, Board of Administration Case #1276. Although the Board believes the Leeds decision is controlling in this matter, it nevertheless will respond to the claimant's arguments raised herein. This decision considers certain other arguments that may have been raised by claimants. By considering these additional arguments, it is hoped that the claimants will more fully understand the administration of the Plan.

STATEMENT OF FACTS

In January 1980, the UAW petitioned for worker adjustment assistance under the Trade Act of 1974. By decision dated May 1, 1980, the U.S. Department of Labor certifed the GMAD plant in St. Louis, Missouri, with an impact date of June 1, 1979 (TA-W-7081). The "impact date" set forth in the certification is selected by the Department of Labor as the earliest date that layoffs can be attributed to increased imports.[1]

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[1] The "impact date" cannot go back more than one year prior to the date of the petition. (Section 223(b) of the Trade Act of 1974.) Workers laid off prior to the impact date are not eligible for TRA even if their layoffs continue past the impact date. Since a delay in filing a petition can result in a total loss of TRA for workers laid off prior to the impact date, the UAW attempts to file petitions for adjustment assistance as soon as imports appear to be a factor causing domestic unemployment.

The claimant subsequently made application for TRA benefits with the state agency. On or after July 11, 1980, claimant received his retroactive TRA payment for all weeks of unemployment going back to the June 1, 1979 impact date.[3]

The claimant had previously received weekly SUBenefits in supplementation of state UC benefits for the same weeks of unemployment covered by the retroactive TRA payments. With the TRA benefits paid in addition to the state UC and SUBenefits, the claimant was then in receipt of approximately 140% of his weekly after-tax pay for the same week of unemployment.

On or about July 18, 1980 the Company was notified by the state of Missouri that checks representing retroactive awards of TRA had been issued commencing July 11, 1980. Pursuant to its authority under Article II, Section 6(a) of the Plan, it determined that a SUBenefit overpayment had been "established or created". A notice of the SUBenefit overpayment dated August 27, 1980 was sent to the claimant within 120 days of July 18, 1980. The overpayment amount owed was $4,055.

The claimant initially received $4,667.82 in Regular SUBenefits for the weeks of layoff covered by the overpayment notice. For each of the weeks involved, the weekly SUBenefit exceeded the amount of TRA received by $15.75 to $34.75. Therefore, because a SUBenefit remains payable for each such week, no credit units will be restored to the claimant when the overpayment is repaid.

If the claimant fails to make voluntary repayments to the SUB Trust Fund as requested in the overpayment notice and returns

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[3] Workers laid off on or after June 1, 1979 were eligible for the weekly TRA benefit - 70% of average weekly wage not to exceed the national average weekly wage, currently $289 - for all weeks of unemployment after June 1, 1979. (Section 232 of Trade Act of 1974.)

to active work with the Company, the Company will commence weekly payroll deductions of $30 per week for transfer to the SUB Trust Fund, pursuant to Article II, Section 6(b) of the Plan. If the claimant files a future SUB application, $20 will be withheld from his benefit pursuant to the same Plan provision. Under the Plan, such deductions continue until the total overpayment is recovered. The weekly deductions made by the Company are paid directly to the Trustee and deposited to the SUB Trust Fund for the exclusive benefit of present and future SUB claimants (including this claimant if he is eligible).

DISCUSSION

The claimant makes the following arguments:

1. The Board did not send claimant the notice of overpayment within 120 days from the date the overpayment was "established or created", i.e., from the date of receipt of the SUBenefits.

2. TRA benefits received are not deductible from SUBenefit payments.

As to the first argument in this case, the Board does not agree that the phrase "from the date the overpayment was established or created" means the date that the SUBenefits were paid. An overpayment of the previously paid SUBenefits cannot be "established or created" until the employe's application to the state (or other applicable governmental agency) is (a) processed for determination with respect to TRA benefit eligibility and amount, (b) benefit checks are issued, and (c) the Company becomes aware that the TRA benefits which causd the overpayment were paid.

The purpose of the 120-day period is to place a time limit on the Company or Board's authority to notify an employe that a SUBenefit overpayment exists. The time limit begins with the date the overpayment is "established or created" and ends 120

days thereafter. The 120-day time period applies only to the time within which the employe must be notified after an overpayment is "established or created". If the employe is notified within the prescribed time limit, the Company may then seek repayment of the entire SUB overpayment.

As to the second argument, the Board notes that the GM-UAW Supplemental Unemployment Benefit (SUB) Plan is a private plan, negotiated by the UAW and GM, to supplement the governmental unemployment insurance system, and covers approximately 430,000 employes. It provides for weekly SUBenefits to eligible employes for periods of unemployment. The weekly SUBenefit for full weeks of layoff is equal to the difference between 95% of weekly after-tax pay and the State System benefit (less $12.50 for work-related expenses not incurred and other earnings).[3]

Since 1970, Article IX, Section 23 of the Plan has specifically defined "State System" to include any "federal laws for paying benefits to persons on account of their unemployment (such as the Trade Readjustment Allowances provided under the Federal Trade Expansion Act of 1962, as amended, and the Trade Act of 1974)". Trade Readjustment Allowances (TRA), therefore, are treated the same as state unemployment compensation (UC) benefits. To have provided otherwise under the Plan would result in an unemployed worker eligible for state UC benefits, TRA and SUB receiving much more in benefits when unemployed than in wages when working full time, a result not in accord with the SUB Plan's basic purpose.

The Board also notes that the claimant has not been treated any differently from the thousands of fellow employes who received TRA benefits in dozens of GM plants across the United States in 1980. Indeed, these same procedures were also used for the Trade Act of 1974 certifications issued in 1975 by the U.S.

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[3] Article II, Section 1(a)

Department of Labor. By the recovery of the SUBenefit overpayment, the Company is not subverting the purpose of the Trade Act but is enforcing the terms of the SUB Plan in accordance with the intent of the parties. The Company is not seeking the payment of TRA to the SUB Trust Fund. An employe may repay SUBenefit overpayments from his or her funds derived from any source. The Company seeks only the return of SUB overpayments to strengthen the Fund in the interest of all participants.

The Board's review of claimant's appeal shows no justification for permitting him to receive far more income while unemployed than while working. This was not the intent of the parties to the Plan, and the Board cannot interpret the Plan to support the claimant's position.

DISPOSITION BY GM-UAW BOARD OF ADMINISTRATION

The Board of Administration has reviewed the information forwarded in connection with this appeal case, and, based upon the facts submitted, has arrived at the following:

1. This case was properly appealed by the Local Committee to the Board in accordance with the provisions of Article V, Section 3 of the 1979 GM-UAW SUB Plan.

2. Article II, Section 1(a) provides that a Regular Benefit payable to an eligible employe for any week shall be an amount which, when added to his State Benefit and Other Compensation, will equal 95% of his after-tax pay, minus $12.50.

3. Article II, Section 3(a)(1) states that an Employe's State Benefit and Other Compensation for a week includes the amount of State System Benefit received or receivable.

4. Article IX, Definition 23 provides that "State System" and "State System Benefit" includes the Trade Readjustment Allowances payable under the Trade Act of 1974.

5. The overpayment notice required under Article II, Section 6(a) was issued within 120 days from the date that the SUBenefit overpayment was "established or created".

6. Article V, Section 3(b)(2)(vi) provides "There shall be no appeal from the Board's decision. It shall be final and binding upon the Union, its members, the Employe, the Trustee, and the Company."

Accordingly, it is the determination of the Board of Administration that the amount of the SUBenefit overpayment stated on the "Determination of Overpayment of SUBenefits By Reason of Receipt of Trade Readjustment Allowance Benefits" form previously furnished the claimant is a valid amount due and owing to the SUB Trust Fund. The claimant, therefore, is required to repay such amount of overpayment in accordance with the SUB Plan provisions.

Issued and approved on August 28, 1981 by the Board of Administration.

(Signatures Illegible)

APPENDIX

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Article II, Section (6)(b) - "If the Employe shall fail to return such amount of overpayment promptly: (1)with respect to Benefit paid from the Fund, the Trustee shall arrange to reimburse the Fund for the amount of overpayment by making a deduction from any future Benefits (not to exceed $20 from any 1 Benefit except in cases of fraud or willful misrepresentation) or Separation Payment otherwise payable to the Employe, or by requesting the Company to make a deduction from future Benefits or compensation payable by the Company to the Employe (not to exceed $30 from any 1 check except in cases of fraud or willful misrepresentation), or both."

II. Trade Act of 1974

SEC. 223. DETERMINATIONS BY SECRETARY OF LABOR

(b) A certification under this section shall not apply to any worker whose last total or partial separation from the firm or appropriate subdivision of the firm before his application under section 231 occurred—

(1) more than one year before the date of the petition on which such certification was granted, or

(2) more than 6 months before the effective date of this chapter.

SEC. 231. QUALIFYING REQUIREMENTS FOR WORKERS

Payment of a trade readjustment allowance shall be made to an adversely affected worker covered by a certification under subchapter A who files an application for such allowance for any week of unemployment which begins after the date specified in such certification pursuant to section 223(a), if the following conditions are met:

(1) Such worker's last total or partial separation before his application under this chapter, occurred—

(A) on or after the date, as specified in the certification under which he is covered, on which total or partial separation began or threatened to begin in the adversely affected employment, and

(B) before the expiration of the 2-year period beginning on the date on which the determination under section 2273 was made, and

(C) before the termination date (if any) determined pursuant to section 223(d); and

(2) Such worker had, in the 52 weeks immediately preceding such total or partial separation, at least 26 weeks of employment at wages of $30 or more a week in adversely affected employment with a single firm or subdivision of a firm, or, if data with respect to weeks of employment are not available, equivalent amounts of employment computed under regulations prescribed by the Secretary.

SEC. 232. WEEKLY AMOUNTS

(a) Subject to the other provisions of this section, the trade readjustment allowance payable to an adversely affected worker for a week of unemployment shall be—

(1) 70 percent of his average weekly wage (but not in excess of the average weekly manufacturing wage), reduced by

(2) 50 percent of the amount of the remuneration for services performed during such week.

APPENDIX C

29 U.S.C. Section 173(d)

Final adjustment by a method agreed upon by the parties is hereby declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective-bargaining agreement. The Service is directed to make its conciliation and mediation services available in the settlement of such grievance disputes only as a last resort and in exceptional cases.